

WAR CRIMES REPORT: INTERNATIONAL ARMED CONFLICT AND THE COMMISSION OF WAR CRIMES IN THE HAWAIIAN ISLANDS

July 18, 2015

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1. PRELIMINARY STATEMENT

- 1.1. This report is provided at the request of Dr. Mera Lee-Penehira, a New Zealand citizen, in light of the recent June 19, 2015 decision by the Swiss Federal Criminal Court Objections Chamber, and a report provided to Mike McCartney, Chief of Staff of State of Hawai‘i Governor David Ige dated July 2, 2015. In its decision, the Swiss the Court concluded that the 1864 Hawaiian-Swiss Treaty was not cancelled and that the Swiss Consulate in Honolulu is unlawful. These decisions stemmed from war crime complaints filed with Swiss authorities by a Swiss expatriate residing in Hawai‘i and a Hawaiian subject. I represent both men in these proceedings. The July 2, 2015 report provides a comprehensive analysis and legal reasoning for the State of Hawai‘i to transform itself from an Armed Force to Military Government, which was prompted as a result of the Swiss decision.¹
- 1.2. The Swiss Court specifically named the CEO of Deutsche Bank and high officials of the State of Hawai‘i as alleged war criminals for committing the war crime of pillaging. Allegations of war crimes can only arise if there is an international armed conflict, and the evidence acquired by the Swiss Attorney General that was provided to the Court clearly established that an international armed conflict does exist between the Hawaiian Kingdom and the United States. According to customary international law, an international armed conflict is not limited to states engaged in hostilities, but also the military occupation of a state’s territory even if it occurred without armed resistance, *i.e.*, Common Article 2, Geneva Conventions.
- 1.3. Regarding the Swiss citizen, whose name I’ve redacted for safety concerns, the Court stated [English translation],

“that by way of a letter dated January 21, 2015, *** (henceforth ‘***,’ ‘objector’ or ‘petitioner’) and his representative David Keanu

* Dr. Sai has a Ph.D. in political science from the University of Hawai‘i at Manoa. This report includes portions of a brief authored by Dr. Matthew Craven, July 12, 2002. Dr. Craven has a Ph.D. in law from the University of Nottingham. He is currently Professor of International Law, Dean of the Faculty of Law and Social Science, University of London, School of Oriental and African Studies. The author’s curriculum vitae is attached herein as Appendix “I.”

¹ Dr. Keanu Sai, *Military Government: Transformation of the State of Hawai‘i* (July 2, 2015) attached herein as Appendix “II.”

Sai made a criminal complaint with the Office of the Federal Attorney General, stating that *** was a victim of a war crime according to Art. 115 StPO, because during the years 2006-2007 and 2011-2013, he had paid taxes to US-American authorities in Hawaii without justification; that ***, in addition, was the victim of fraud, committed by the State of Hawaii, because together with his wife he wanted to acquire a real estate property, which however on the basis of the lacking legitimacy of the official authorities of Hawaii to transfer the property title, was not possible; that in consequence, the governor of the State of Hawaii Neil Abercrombie (henceforth 'Abercrombie'), Lieutenant Shan Tsutsui (henceforth 'Tsutsui'), the director of the Department of Taxation Frederik Pablo (henceforth 'Pablo') and his deputy Joshua Wisch (henceforth 'Wisch') are to be held criminally accountable for the pillaging of ***'s private property and for fraud.”²

1.4. Regarding the allegations by the Hawaiian subject, the Court stated [English translation],

“that, in addition, by way of a letter dated January 22, 2015, Sai, in the name of Kale Kepekaio Gumapac (henceforth “Gumapac”) contacted the office of the Federal Attorney General and requested that criminal proceedings against Josef Ackermann (henceforth “Ackermann”), the former CEO of Deutsche Bank National Trust Company (henceforth “Deutsche Bank”) be opened and in this connection invoked rights deriving from Art. 1 of the friendship treaty between the Swiss Confederation and the then Hawaiian King of July 20, 1864, which has not been cancelled; that this complaint arose from a civil dispute between Gumapac and Deutsche Bank; that Gumapac was the owner of a property on Hawaii and a mortgagee of Deutsche Bank; that however the title of property, due to the illegal annexation of the Kingdom of Hawaii, was null and void, since the local US-American notaries were not empowered to transfer title; that Deutsche Bank did not recognize this fact and that it had foreclosed on Gumapac’s house to cover the mortgage debt, instead of claiming its rights stemming from a “title insurance;” that the bank therefore had pillaged Gumapac’s house according to the

² *Gumapac, et al. v. Office of Federal Attorney General*, BB 2015.36+37, new time limit (Art. 94 para. 2, StPO) (June 19, 2015). Original in German: “mit Schreiben vom 21. Januar 2015 *** (nachfolgend ‘***’, ‘Beschwerdeführer’ oder ‘Gesuchsteller’) und dessen Vertreter David Keanu Sai (nachfolgend ‘Sai’) Strafanzeige bei der Bundesanwaltschaft erhoben und geltend machten, *** sei Geschädigter eines Kriegsverbrechens im Sinne von Art. 115 StPO, weil er in den Jahren 2006-2007 und 2011-2013 ungerechtfertigterweise Steuerabgaben an die US-amerikanischen Behörden auf Hawaii geleistet habe; *** zudem Opfer eines Betrugs, begangen durch den Staat Hawaii, sei, indem er gemeinsam mit seiner Ehefrau eine Immobilie habe erwerben wollen, was aber aufgrund der fehlenden Legitimität der staatlichen Behörden Hawaiis zur Übertragung des Eigentumstitels nicht möglich sei; daher der Gouverneur des Staates von Hawaii, Neil Abercrombie (nachfolgend ‘Abercrombie’), Leutnant Shan Tsutsui (nachfolgend ‘Tsutsui’), der Direktor der Steuerbehörde Frederik Pablo (nachfolgend ‘Pablo’) und dessen Stellvertreter Joshua Wisch (nachfolgend ‘Wisch’) wegen Plünderung des privaten Eigentums von *** und wegen Betrugs strafrechtlich zur Verantwortung zu ziehen seien.”

international laws of war (BB.2015.36-37 case files, box section 3 and 5).”³

- 1.5. Regarding the subject of the unlawfulness of the Swiss Consulate in Hawai‘i, the Court stated [English translation],

“that in the absence of SwissPost and/or a lawful consular representation of Switzerland in the Hawaiian Islands, the petitioners stated to have had no other recourse but to use a private courier to which they stated to have handed the objection, in good faith, on April 1, actually one day before the end of the time limit.”⁴

- 1.6. In light of the purely procedural discrepancies cited by the Court, the war crime complaints will be re-submitted to the Swiss Attorney General at the end of this month with the purpose of securing written charges in order to proceed toward prosecution.
- 1.7. These matters arise out of the prolonged and illegal occupation of the entire territory of the Hawaiian Kingdom by the United States of America (United States) since the Spanish-American War on August 12, 1898, and the failure on the part of the United States to establish a direct system of administering the laws of the Hawaiian Kingdom in accordance with international humanitarian law. The United States disguised its occupation of the Hawaiian Kingdom as if a treaty of cession annexed the Hawaiian Islands. There is no treaty.
- 1.8. For the past 122 years, the United States has committed a serious international wrongful act and deliberately misled the international community that the Hawaiian Islands had been incorporated into the territory of the United States. It has unlawfully imposed its internal laws over Hawaiian territory, which

³ *Id.* Original in German: “mit Schreiben vom 22. Januar 2015 zudem Sai namens Kale Kepekaio Gumapac (nachfolgend ‘Gumapac’, ‘Beschwerdeführer’ oder ‘Gesuchsteller’) an die Bundesanwaltschaft gelangte und diese aufforderte, ein Strafverfahren gegen Josef Ackermann (nachfolgend ‘Ackermann’), ehemaliger Vorsitzender der Deutschen Bank National Trust Company (nachfolgend ‘Deutsche Bank’), zu eröffnen und dabei Rechte aus Art. 1 des ungekündigten Freundschaftsvertrages zwischen der Schweizerischen Eidgenossenschaft und dem damaligen Hawaiischen König vom 20. Juli 1864 geltend machte; diese Anschuldigung aus einer zivilrechtlichen Streitigkeit zwischen Gumapac und der Deutschen Bank herrühren würde; Gumapac Eigentümer eines Grundstücks auf Hawaii und Hypothekarkreditschuldner der Deutschen Bank gewesen sei; der Eigentumserwerbstitel infolge der illegalen Annexion des Königreichs Hawaii jedoch nichtig sei, da die örtlichen US-amerikanischen Notare gar nicht zur Eigentumsübertragung legitimiert gewesen seien; die Deutsche Bank diesen Umstand nicht erkannt habe und das Haus Gumapacs zur Deckung der Hypothekarforderung liquidiert hätte, anstatt ihre Rechte aus einer ‘title insurance’ geltend zu machen; die Bank daher das Haus Gumapacs geplündert habe im Sinne des Kriegsvölkerrechts (BB.2015.36-37 Verfahrensakten Ordner Lasche 3 und 5).”

⁴ *Id.* Original in German: “infolge Abwesenheit einer Schweizerischen Poststelle und/oder einer rechtmässigen konsularischen Vertretung der Schweiz auf den Hawaiischen Inseln die Gesuchsteller zwingend einen privaten Kurierdienst hätten beauftragen müssen, welchem sie die Beschwerde in guten Treuen am 1. April 2015, mithin einen Tag vor Ablauf der Beschwerdefrist, übergeben hätten (act. 1 S. 5 f.).”

includes its territorial seas, its exclusive economic zone, and its airspace, in violation of its treaties with the Hawaiian Kingdom and international humanitarian law, which is provided in the 1907 Hague Conventions (HC IV), the 1949 Geneva Conventions (GC IV) and its 1977 Additional Protocols. Hawaiian Kingdom law is binding over all persons and property within its territorial jurisdiction.

“The laws are obligatory upon all persons, whether subjects of this kingdom, or citizens or subjects of any foreign [s]tate, while within the limits of this kingdom, except so far as exception is made by the laws of nations in respect to Ambassadors or others. The property of all such persons, while such property is within the territorial jurisdiction of this kingdom, is also subject to the laws.”⁵

- 1.9. Her British Majesty Queen Victoria was the first to recognize Hawaiian independence in a joint proclamation with the French on November 28, 1843, and subsequently entered into a Treaty of Friendship, Commerce and Navigation on July 10, 1851. In 1893, the Hawaiian Kingdom maintained a Legation in London, and two Consulates in the cities of Auckland and Dunedin, and the United Kingdom maintained a Legation and a Consulate in Honolulu. These Consulates were established in accordance with Article XII of the 1851 Hawaiian-British Treaty, which provides:

“It shall be free for each of the two contracting parties to appoint consuls for the protection of trade, to reside in the territories of the other party; but before any consul shall act as such, he shall, in the usual form, be approved and admitted by the Government to which he is sent; and either of the contracting parties may except from the residence of consuls such particular places as either of them may judge fit to be excepted. The diplomatic agents and consuls of the Hawaiian Islands, in the dominions of Her Britannic Majesty, shall enjoy whatever privileges, exemptions and immunities are, or shall be granted there to agents of the same rank belonging to the most favored nation; and, in like manner, the diplomatic agents and consuls of Her Britannic Majesty in the Hawaiian Islands shall enjoy whatever, privileges, exemptions, and immunities are or may be granted there to the diplomatic agents and consuls of the same rank belonging to the most favored nation.”⁶

- 1.10. The first allegations of war crimes, being unfair trial and unlawful confinement, were made the subject of an arbitral dispute in *Lance Larsen vs. the Hawaiian Kingdom*⁷ at the Permanent Court of Arbitration (PCA), The

⁵ Hawaiian Kingdom Civil Code (Compiled Laws), §6. Civil Code *available at*: <http://hawaiiankingdom.org/civilcode/index.shtml>.

⁶ Hawaiian-British Treaty of Friendship, Commerce and Navigation (July 10, 1851), attached herein as Appendix “III.”

⁷ See *Lance Larsen v. Hawaiian Kingdom*, 119 INT’L L. REP. 566 (2001), reprinted in 1 HAW. J. L. & POL. 299 (Summer 2004); see also Permanent Court of Arbitration website, Cases, *Larsen/Hawaiian Kingdom*,

Hague, Netherlands. Oral hearings were held at the Peace Palace, The Hague, on December 7, 8, and 11, 2000. The author of the report served as lead agent for the Hawaiian Kingdom in these arbitral proceedings.

“At the center of the PCA proceedings was the argument that Hawaiians never directly relinquished to the United States their claim of inherent sovereignty either as a people or over their national lands, and accordingly that the Hawaiian Kingdom continues to exist and that the Hawaiian Council of Regency (representing the Hawaiian Kingdom) is legally responsible under international law for the protection of Hawaiian subjects, including the claimant. In other words, the Hawaiian Kingdom was legally obligated to protect Larsen from the United States’ ‘unlawful imposition [over him] of [its] municipals’ through its political subdivision, the State of Hawai‘i. As a result of this responsibility, Larsen submitted, the Hawaiian Council of Regency should be liable for any international law violations that the United States had committed against him.”⁸

- 1.11. On July 5, 2001, the Hawaiian Council of Regency (*acting* Government) filed a Complaint with the United Nations Security Council in New York as a state not a member of the United Nations pursuant to Article 35(2) of the United Nations Charter as a non-member state of the United Nations.⁹ The Complaint was accepted by China who served as President of the Security Council.¹⁰
- 1.12. On August 10, 2012, the *acting* Government submitted a Protest and Demand with the President of the United Nations General Assembly in New York as a state not a member of the United Nations pursuant to Article 35(2) of the United Nations Charter as a non-member state of the United Nations. Ms.

at http://www.pca-cpa.org/showpage.asp?pag_id=1159 (Permanent Ct. Arb. Trib. Feb. 5, 2001). The formation of the *acting* government of the Hawaiian Kingdom under the doctrine of necessity being a portion of a legal brief by Dr. David Keanu Sai, *The Continuity of the Hawaiian State and the Legitimacy of the acting Government of the Hawaiian Kingdom* (August 4, 2013), available at: http://hawaiiankingdom.org/pdf/Continuity_Brief.pdf.

⁸ David Bederman & Kurt Hilbert, *Arbitration—UNCITRAL Rules—justiciability and indispensable third parties—legal status of Hawaii*, 95 AM. J. INT’L L. 927, 928 (2001).

⁹ See the Charter of the United Nations:

CHAPTER VI: PACIFIC SETTLEMENT OF DISPUTES

Article 35

Any Member of the United Nations may bring any dispute, or any situation of the nature referred to in Article 34, to the attention of the Security Council or of the General Assembly.

A state which is not a Member of the United Nations may bring to the attention of the Security Council or of the General Assembly any dispute to which it is a party if it accepts in advance, for the purposes of the dispute, the obligations of pacific settlement provided in the present Charter.

The proceedings of the General Assembly in respect of matters brought to its attention under this Article will be subject to the provisions of Articles 11 and 12.

¹⁰ Patrick Dumberry, *The Hawaiian Kingdom Arbitration Case and the Unsettled Question of the Hawaiian Kingdom’s Claim to Continue as an Independent State under International Law*, 2(1) CHINESE J. INT’L L. 655, 671-672 (2002). The Hawaiian Complaint (July 5, 2001), available at: http://hawaiiankingdom.org/pdf/Hawaiian_UN_Complaint.pdf.

Hanifa Mizoui, Ph.D., Special Coordinator, Third Committee and Civil Society, Office of the President of the Sixty-Sixth Session of the General Assembly, received and acknowledged the complaint.¹¹

- 1.13. On November 28, 2012, the *acting* Government signed its Instrument of Accession to the GC IV, and it was deposited with the General Secretariat of the Swiss Federal Department of Foreign Affairs in Berne, Switzerland, on January 14, 2013. The GC IV took immediate effect on the aforementioned date of deposit in accordance with Article 157 of the said Convention.¹²

2. THE REPORT

- 2.1. Since war crimes can only arise if there is an armed conflict between states—the United States and the Hawaiian Kingdom, it follows that the continuity of the Hawaiian Kingdom as an independent state and subject of international law is *condicio sine qua non*. It is therefore necessary to examine first the question of the Hawaiian Kingdom and state continuity, which will include the United States of America’s claim as its successor.
- 2.2. The report will answer four initial questions:
 - A. Whether the Hawaiian Kingdom existed as an independent state and a subject of international law.
 - B. Whether the Hawaiian Kingdom continues to exist as an independent state and a subject of International Law, despite the illegal overthrow of its government by the United States.
 - C. Whether New Zealand, as a member of the Commonwealth Realm, has a treaty with the Hawaiian Kingdom.
 - D. Whether war crimes have been committed in violation of international humanitarian law.
- 2.3. A fifth element of the report, which depends upon an affirmative answer to each of the above questions, is:
 - E. Whether the New Zealand Government is capable of investigating and prosecuting war crimes that occur outside of its territory.

¹¹ Hawaiian Kingdom Protest and Demand *available at*:
http://www.hawaiiankingdom.org/UN_Protest_pressrelease.shtml.

¹² Hawaiian Instrument of Accession filed with the Swiss Foreign Ministry, January 14, 2013, *available at*:
http://www.hawaiiankingdom.org/pdf/GC_Accession.pdf.

A. THE HAWAIIAN KINGDOM

3. A SUBJECT OF INTERNATIONAL LAW

3.1. When the United Kingdom and France formally recognized the Hawaiian Kingdom as an “independent state” at the Court of London on November 28, 1843,¹³ and later formally recognized by the United States of America on July 6, 1844 by letter to the Hawaiian government from Secretary of State John C. Calhoun,¹⁴ the Hawaiian state was admitted into the Family of Nations. Since its recognition, the Hawaiian Kingdom entered into extensive treaty relations with a variety of states establishing diplomatic relations and trade agreements.¹⁵ To quote the *dictum* of the Permanent Court of Arbitration in 2001:

“A perusal of the material discloses that in the nineteenth century the Hawaiian Kingdom existed as an independent [s]tate recognized as such by the United States of America, the United Kingdom and various other States, including by exchanges of diplomatic or consular representatives and the conclusion of treaties.”¹⁶

Additionally, the Hawaiian Kingdom became a full member of the Universal Postal Union on January 1, 1882. Attached, as Appendix “IV,” is a registry of the Hawaiian Kingdom for the year 1893.

3.2. As an independent state, the Hawaiian Kingdom, along with other independent states within the Family of Nations, obtained an “international personality.” As such, all independent states, “are regarded equal, and the rights of each not deemed to be dependent upon the possession of power to insure their enforcement.”¹⁷ According to Dickinson, the

“principle of equality has an important legal significance in the modern law of nations. It is the expression of two important legal principles. The first of these may be called the equal protection of the law or equality before the law. ...The second principle is usually

¹³ The Anglo-French Joint Declaration available at: <http://hawaiiankingdom.org/pdf/Annex%202.pdf>.

¹⁴ U.S. Secretary of State Calhoun’s letter available at: <http://hawaiiankingdom.org/pdf/Annex%203.pdf>.

¹⁵ The Hawaiian Kingdom entered into treaties with Austria-Hungary, June 18, 1875; Belgium, October 4, 1862; Bremen (succeeded by Germany), March 27, 1854; Denmark, October 19, 1846; France, September 8, 1858; French Tahiti, November 24, 1853; Germany, March 25, 1879; New South Wales (now Australia), March 10, 1874; Hamburg (succeeded by Germany), January 8, 1848); Italy, July 22, 1863; Japan, August 19, 1871, January 28, 1886; Netherlands & Luxembourg, October 16, 1862 (William III was also Grand Duke of Luxembourg); Portugal, May 5, 1882; Russia, June 19, 1869; Samoa, March 20, 1887; Spain, October 9, 1863; Sweden-Norway (now separate States), April 5, 1855; and Switzerland, July 20, 1864; the United Kingdom of Great Britain and Northern Ireland) March 26, 1846; and the United States of America, December 20, 1849, January 13, 1875, September 11, 1883, December 6, 1884. These treaties available at: http://hawaiiankingdom.org/UN_Protest_Annexes.shtml.

¹⁶ *Larsen v. Hawaiian Kingdom*, 119 INT’L L. REP. 566, 581 (2001), reprinted in 1 HAW. J. L. & POL. 299 (Summer 2004).

¹⁷ CHARLES CHENEY HYDE, INTERNATIONAL LAW: CHIEFLY AS INTERPRETED AND APPLIED BY THE UNITED STATES 20 (Vol. I, 1922).

described as equality of rights and obligations or more often as equality of rights.”¹⁸

International personality is defined as “the capacity to be bearer of rights and duties under international law.”¹⁹ Crawford, however, distinguishes between “general” and “special” legal personality. The former “arises against the world (*erga omnes*),” and the latter “binds only consenting [s]tates.”²⁰ As an independent state, the Hawaiian Kingdom, like the United States of America, has both “general” legal personality under international law as well as “special” legal personality under the 1893 executive agreements²¹ that bind both the Hawaiian Kingdom and the United States to certain duties and obligations as hereinafter described.

- 3.3. The consequences of statehood at that time were several. States were deemed to be sovereign not only in a descriptive sense, but were also regarded as being “entitled” to sovereignty. This entailed, among other things, the rights to free choice of government, territorial inviolability, self-preservation, free development of natural resources, of acquisition and of absolute jurisdiction over all persons and things within the territory of the state.²² It was, however, admitted that intervention by another state was permissible in certain prescribed circumstances such as for purposes of self-preservation, for purposes of fulfilling legal engagements, or of opposing wrongdoing. Although intervention was not absolutely prohibited in this regard, it was generally confined as regards the specified justifications. As Hall remarked, “The legality of an intervention must depend on the power of the intervening state to show that its action is sanctioned by some principle which can, and in the particular case does, take precedence of it.”²³ A desire for simple aggrandizement of territory did not fall within these terms, and intervention for purposes of supporting one party in a civil war was often regarded as unlawful.²⁴ In any case, the right of independence was regarded as so fundamental that any action against it “must be looked upon with disfavor.”²⁵

4. *FIRST ARMED CONFLICT WITH UNITED STATES—JANUARY 16, 1893*

- 4.1. “Governmental authority,” states Crawford, “is the basis for normal inter-[s]tate relations; what is an act of a [s]tate is defined primarily by reference to

¹⁸ EDWIN DEWITT DICKINSON, *THE EQUALITY OF STATES IN INTERNATIONAL LAW* 335 (1920).

¹⁹ SCHWARZENBERGER, *A MANUAL OF INTERNATIONAL LAW* 53 (6th ed., 1976).

²⁰ JAMES CRAWFORD, *THE CREATION OF STATES IN INTERNATIONAL LAW* 30 (2nd ed., 2006).

²¹ David Keanu Sai, *A Slippery Path towards Hawaiian Indigeneity: An Analysis and Comparison between Hawaiian State Sovereignty and Hawaiian Indigeneity and its use and practice in Hawai‘i today*, 10 *J. L. & SOC. CHALLENGES* 68, 119-121 (2008); see also *infra* para. 4.1-4.6.

²² ROBERT PHILLIMORE, *COMMENTARIES UPON INTERNATIONAL LAW*, VOL. I, 216 (1879).

²³ WILLIAM EDWARD HALL, *A TREATISE ON INTERNATIONAL LAW* 298 (4th ed. 1895).

²⁴ THOMAS LAWRENCE, *PRINCIPLES OF INTERNATIONAL LAW* 134 (4th ed. 1913).

²⁵ See HALL, *supra* note 23, at 298.

its organs of government, legislative, executive or judicial.”²⁶ On January 17, 1893, Queen Lili‘uokalani, who was constitutionally vested with the “executive power” under Article 31 of the Hawaiian constitution,²⁷ was unable to apprehend certain insurgents calling themselves the provisional government without armed conflict between United States troops, who were illegally landed by the United States Legation to protect the insurgents, and the Hawaiian police force headed by Marshal Charles Wilson. The Queen was forced to temporarily assign her police power to the President of the United States under threat of war calling for an investigation of its senior diplomat and military commanders who had intervened in the internal affairs of the Hawaiian Kingdom, and, thereafter, restore the government.²⁸ Upon receipt of the Queen’s diplomatic protest, United States President Cleveland initiated an investigation by first withdrawing a treaty, which provided for the cession of Hawaiian territory, from the United States Senate. To conduct the investigation, President Cleveland appointed a Special Commissioner, James Blount, to travel to the Hawaiian Islands in order to provide reports to the United States Secretary of State Walter Gresham. Blount reported that, “in pursuance of a prearranged plan [between the insurgents, claiming to be a government, and the U.S. Legation], the Government thus established hastened off commissioners to Washington to make a treaty for the purpose of annexing the Hawaiian Islands to the United States.”²⁹

- 4.2. The investigation concluded that the United States Legation accredited to the Hawaiian Kingdom, together with United States Marines and Naval personnel, were directly responsible for the illegal overthrow of the Hawaiian government with the ultimate goal of transferring the Hawaiian Islands to the United States from an installed puppet government.³⁰ The President acknowledged:

²⁶ See CRAWFORD, *supra* note 20, at 56.

²⁷ Constitution of the Hawaiian Kingdom, 1864, art. 31: “The person of the King is inviolable and sacred. His Ministers are responsible. To the King belongs the executive power. All laws that have passed the Legislative Assembly, shall require His Majesty’s signature in order to their validity,” *available at*: <http://hawaiiankingdom.org/pdf/Annex%204.pdf>.

²⁸ The diplomatic protest stated, “I, Liliuokalani, by the grace of God and under the constitution of the Hawaiian Kingdom, Queen, do hereby solemnly protest against any and all acts done against myself and the constitutional Government of the Hawaiian Kingdom by certain persons claiming to have established a provisional government of and for this Kingdom. That I yield to the superior force of the United States of America, whose minister plenipotentiary, His Excellency John L. Stevens, has caused United States troops to be landed at Honolulu and declared that he would support the said provisional government. Now, to avoid any collision of armed forces and perhaps the loss of life, I do, under this protest, and impelled by said force, yield my authority until such time as the Government of the United States shall, upon the facts being presented to it, undo the action of its representatives and reinstate me in the authority which I claim as the constitutional sovereign of the Hawaiian Islands.”

²⁹ United States House of Representatives, 53rd Congress, Executive Documents on Affairs in Hawai‘i: 1894-95, (Government Printing Office 1895), 587, [hereafter Executive Documents]. Reprinted at 1 HAW. J. L. & POL. 136 (Summer 2004). The Executive Documents are available at the University of Hawai‘i at Manoa Library website at: <http://libweb.hawaii.edu/digicoll/annexation/blount.html>.

³⁰ *Id.* at 567.

“the military demonstration upon the soil of Honolulu was of itself an act of war, unless made either with the consent of the Government of Hawai‘i or for the *bona fide* purpose of protecting the imperiled lives and property of citizens of the United States. But there is no pretense of any such consent on the part of the Government of the Queen, which at that time was undisputed and was both the *de facto* and the *de jure* government.”³¹

“When our Minister recognized the provisional government the only basis upon which it rested was the fact that the Committee of Safety had in a manner above stated declared it to exist. It was neither a government *de facto* nor *de jure*.”³²

- 4.3. Under customary international law, the provisional government was an armed force and not a government. It was born out of intervention by the U.S. Minister. Military manuals define Armed Forces as “organized armed groups which are under a command responsible to that party for the conduct of its subordinates.”³³ According to Henckaerts and Doswald-Beck, “this definition of armed forces covers all persons who fight on behalf of a party to a conflict and who subordinate themselves to its command,”³⁴ and that this “definition of armed forces builds upon earlier definitions contained in the Hague Regulations and the Third Geneva Convention which sought to determine who are combatants entitled to prisoner-of-war status.”³⁵ Article 1 of the 1907 Hague Convention, IV, provides that

“The laws, rights, and duties of war apply not only to armies, but also to militia and volunteer corps fulfilling the following conditions: (1) To be commanded by a person responsible for his subordinates; (2) To have a fixed distinctive emblem recognizable at a distance; (3) To carry arms openly; and (4) To conduct their operations in accordance with the laws and customs of war.”

- 4.4. The investigation also detailed the culpability of the United States government in violating international laws, as well as Hawaiian state territorial sovereignty and concluded it must provide *restitutio in integrum*—restoration to the original situation before the United States intervention occurred on January 16, 1893. According to Oppenheim, it “is obvious that there must be a pecuniary reparation for a material damage; and at least a formal apology on the part of the delinquent will in every case be necessary.”³⁶ In the *Chorzow Factory* case, the Permanent Court of International Justice, stated:

³¹ *Id.*, at 451.

³² *Id.*, at 453.

³³ JEAN-MARIE HENCKAERTS AND LOUISE DOSWALD-BECK, CUSTOMARY INTERNATIONAL HUMANITARIAN LAW, vol. I, 14 (2009).

³⁴ *Id.*, at 15.

³⁵ *Id.*

³⁶ LASSA OPPENHEIM, INTERNATIONAL LAW, VOL. I—PEACE 318-319 (7th ed. 1948).

“The essential principle contained in the actual notion of an illegal act—a principle which seems to be established by international practice and in particular by the decisions of arbitral decisions—is that reparation must, as far as possible, wipe out all the consequences of the illegal act and re-establish the situation which would, in all probability, have existed if that act had not been committed. Restitution in kind or, if this is not possible, payment of a sum corresponding to the value which a restitution in kind would bear.”³⁷

- 4.5. Prior to his first of several meetings with the Queen at the United States Legation in Honolulu, the new United States Minister Plenipotentiary Albert Willis was instructed by Gresham to provide an apology on behalf of the President for the United States’ illegal actions taken by its diplomat and troops. Gresham’s instructions provided,

“On your arrival at Honolulu you will take advantage of an early opportunity to inform the Queen of this determination, making known to her the President’s sincere regret that the reprehensible conduct of the American minister and the unauthorized presence on land of a military force of the United States obliged her to surrender her sovereignty, for the time being, and rely on the justice of this Government to undo the flagrant wrong.

You will, however, at the same time inform the Queen that, when reinstated, the President expects that she will pursue a magnanimous course by granting full amnesty to all who participated in the movement against her, including persons who are, or have been, officially or otherwise, connected with the Provisional Government, depriving them of no right or privilege which they enjoyed before the so-called revolution. All obligations created by the Provisional Government in due course of administration should be assumed.”³⁸

- 4.6. The first meeting with the Queen was held at the United States Legation on November 13, 1893, where Willis conveyed the apology and the condition of reinstatement as he was instructed.³⁹ The Queen, however, did not accept the President’s condition of reinstatement.⁴⁰ Additional meetings were held on December 16th and 18th and through negotiations and *exchange of notes* between the Queen and Willis, settlement for the illegal overthrow of the Hawaiian government was finally achieved by executive agreement on December 18, 1893.⁴¹ On the part of the United States, the President committed to restore the government as it stood before the landing of United States troops on January 16, 1893, and, thereafter, on the part of the Hawaiian Kingdom, the Queen committed to grant amnesty to the insurgents and

³⁷ *The Factory at Chorzow* (Germany v. Poland), P.C.I.J. (series A) No. 17, at 47 (1927).

³⁸ See Executive Documents, *supra* note 29, at 464.

³⁹ *Id.*, at 1242.

⁴⁰ *Id.*, at 1243.

⁴¹ *Id.*, at 1269-1270.

assume all obligations of the self-proclaimed provisional government. Myers explains, “*Exchange of notes* is the most flexible form of a treaty... The exchange consists of an offer and an acceptance... The offering instrument contains a text of the proposed agreement and the acceptance invariably repeats it verbatim, with assent.”⁴² According to Garner,

“Agreements in the form of an *exchange of notes* between certain high officials acting on behalf of [s]tates, usually their Ministers of Foreign Affairs or diplomatic representatives are numerous... They are employed for a variety of purposes and, like instruments which are designated as ‘treaties’, they may deal with any matter which is a proper subject of international regulation. One of their most common objects is to record the understandings of the parties to a treaty which they have previously entered into; but they may record an entirely new agreement, sometimes one which has been reached as a result of negotiation. While the purpose of an agreement effected by any *exchange of notes* may not differ from that of instruments designated by other names, it is strikingly different in its form from a ‘treaty’ or a ‘convention.’ Unlike a treaty, the relations which it establishes or seeks to establish is recorded, not in a single highly formalized instrument, but in two or more letters usually called ‘notes,’ signed by Ministers or other officials.”⁴³

The first executive agreement, by *exchange of notes*, was the temporary and conditional assignment of executive power (police power) from the Queen to the President on January 17, 1893, and the acceptance of the assignment by the President on March 9, 1893 when he initiated the investigation. The second executive agreement, by *exchange of notes*, was the President’s “offer” to restore the *de jure* government on condition that the Queen would commit to grant amnesty to the insurgents on November 13, 1893, and the “acceptance” by the Queen of this condition on December 18, 1893. The two executive agreements are referred to herein as the *Lili‘uokalani assignment* and the *Agreement of restoration*, respectively.

- 4.7. By virtue of the *Lili‘uokalani assignment*, police power⁴⁴ of the Hawaiian Kingdom is temporarily vested in the President of the United States to faithfully administer Hawaiian Kingdom law, until the Hawaiian Kingdom government is restored pursuant to the *Agreement of restoration*, whereby the police power is reassigned and thereafter the Monarch, or its successor, to grant amnesty. The failure of Congress to authorize the President to use force in carrying out these agreements did not diminish the validity of the *Lili‘uokalani assignment* and the *Agreement of restoration*. Despite over a

⁴² Denys P. Myers, *The Names and Scope of Treaties*, 51 AM. J. INT’L L. 590 (1957).

⁴³ 29 AM. J. INT’L L., Supplement, 698 (1935).

⁴⁴ Police power is the inherent power of government to exercise reasonable control over persons and property within its jurisdiction in the interest of the general security, health, safety, morals, and welfare except where legally prohibited.

century of non-compliance, these executive agreements remain binding upon the office of President of the United States to date. According to Wright, the President binds “himself and his successors in office by executive agreements.”⁴⁵

- 4.8. President Cleveland failed to follow through in his commitment to administer Hawaiian law and re-instate the *de jure* government as a result of partisan wrangling in the United States Congress. In a deliberate move to further isolate the Hawaiian Kingdom from any assistance by other states and treaty partners and to reinforce and protect the puppet regime installed by United States officials, the Senate and House of Representatives each passed similar resolutions in 1894 strongly warning other states “that any intervention in the political affairs of these islands by any other Government will be regarded as an act unfriendly to the United States.”⁴⁶ Although the Hawaiian government was not restored and the country thrown into civil unrest as a result, the continuity of the Hawaiian State was nevertheless maintained.
- 4.9. Five years passed before Cleveland’s presidential successor, William McKinley, entered into a second treaty of cession with the same individuals who participated in the illegal overthrow with the United States legation in 1893, and were now calling themselves the Republic of Hawai’i. This second treaty was signed on June 16, 1897 in Washington, D.C., but would “be taken up immediately upon the convening of Congress next December.”⁴⁷
- 4.10. Queen Lili’uokalani was in the United States at the time of the signing of the treaty and protested the second annexation attempt of the country. While in Washington, D.C., the Queen filed a diplomatic protest with the United States Department of State on June 17, 1897. The Queen stated, in part:

“I, Lili’uokalani of Hawai’i, by the will of God named heir apparent on the tenth day of April, A.D. 1877, and by the grace of God Queen of the Hawaiian Islands on the seventeenth day of January, A.D. 1893, do hereby protest against the ratification of a certain treaty, which, so I am informed, has been signed at Washington by Messrs. Hatch, Thurston, and Kinney, purporting to cede those Islands to the territory and dominion of the United States. I declare such a treaty to be an act of wrong toward the native and part-native people of Hawaii, an invasion of the rights of the ruling chiefs, in violation of international rights both toward my people and toward friendly nations with whom they have made treaties, the perpetuation of the

⁴⁵ QUINCY WRIGHT, *THE CONTROL OF FOREIGN RELATIONS*, 235 (1922).

⁴⁶ 26 U.S. CONG. REC., 53rd Congress, 2nd Session, 5499.

⁴⁷ “Hawaiian Treaty to Wait—Senator Morgan Suggests that It Be Taken Up at This Session Without Result.” *The New York Times*, 3 (July 25, 1897).

fraud whereby the constitutional government was overthrown, and, finally, an act of gross injustice to me.”⁴⁸

Hawaiian political organizations in the Islands filed additional protests with the Department of State in Washington, D.C. These organizations were the Men and Women’s Hawaiian Patriotic League (Hui Aloha ‘Aina), and the Hawaiian Political Association (Hui Kalai’aina).⁴⁹ In addition, a petition of 21,269 signatures of Hawaiian subjects and resident aliens protesting annexation was filed with the Senate when it convened in December 1897.⁵⁰ As a result of these protests, the Senate was unable to garner enough votes to ratify the so-called treaty.

5. SECOND ARMED CONFLICT WITH THE UNITED STATES—1898 SPANISH-AMERICAN WAR

- 5.1. On April 25, 1898, Congress declared war on Spain. Battles were fought in the Spanish colonies of Puerto Rico and Cuba in the Atlantic, as well as the Spanish colonies of the Philippines and Guam in the Pacific. After Commodore Dewey defeated the Spanish Fleet in the Philippines on May 1, 1898, the United States administration made active preparations for an expansion of the war into a general war of aggression by invading and occupying the territory of the Hawaiian Kingdom.⁵¹ In accordance with those plans, they caused United States troops to violate Hawai‘i’s neutrality and eventually occupy the Hawaiian Kingdom in order to facilitate the carrying out of their military operations against the Spanish in the Pacific. The invasion and occupation of Hawaiian territory had been specifically planned in advance, in violation of the executive agreements of 1893.

- 5.2. On May 4, 1898, U.S. Congressman Francis Newlands, submitted a joint resolution for the annexation of the Hawaiian Islands to the House Committee on Foreign Affairs. Six days later, hearings were held on the Newlands resolution, and in testimony submitted to the committee, U.S. military leaders called for the immediate occupation of the Hawaiian Islands due to military necessity for both during the war with Spain and for any future wars that the United States would enter. U.S. Naval Captain Alfred Mahan stated to the committee:

“It is obvious that if we do not hold the islands ourselves we cannot expect the neutrals in the war to prevent the other belligerent from occupying them; nor can the inhabitants themselves prevent such

⁴⁸ LILI‘UOKALANI, HAWAI‘I’S STORY BY HAWAI‘I’S QUEEN, 354 (1964); Protest *reprinted in* 1 HAW. J. L. & POL. 227 (Summer 2004).

⁴⁹ These protests *available at*: <http://hawaiiankingdom.org/pdf/Annex%2018.pdf>.

⁵⁰ The signature petition *available at*: <http://hawaiiankingdom.org/pdf/Annex%2019.pdf>.

⁵¹ The United States Attorney General concluded in 1855, “It is a settled principle of the law of nations that no belligerent can rightfully make use of the territory of a neutral state for belligerent purposes without the consent of the neutral government.” Caleb Cushing, “Foreign Enlistments in the United States,” 7 OPP. ATT. GEN. 367 (1855).

occupation. The commercial value is not great enough to provoke neutral interposition. In short, in war we should need a larger Navy to defend the Pacific coast, because we should have not only to defend our own coast, but to prevent, by naval force, an enemy from occupying the islands; whereas, if we preoccupied them, fortifications could preserve them to us. In my opinion it is not practicable for any trans-Pacific country to invade our Pacific coast without occupying Hawaii as a base.”⁵²

- 5.3. While the debates ensued in both the U.S. House and Senate, the *U.S.S. Charleston*, a protected cruiser, was ordered to lead a convoy of 2,500 troops to reinforce U.S. troops in the Philippines and Guam. These troops were boarded on the transport ships of the *City of Peking*, the *City of Sidney* and the *Australia*. In a deliberate violation of Hawaiian neutrality during the war as well as of international law, the convoy, on May 21, set a course to the Hawaiian Islands for re-coaling purposes. The convoy arrived in Honolulu on June 1, and took on 1,943 tons of coal before it left the islands on June 4.⁵³
- 5.4. As soon as it became apparent that the self-declared Republic of Hawai‘i, a puppet regime of the United States since 1893, had welcomed the U.S. naval convoys and assisted in re-coaling their ships, H. Renjes, Spanish Vice-Consul in Honolulu, lodged a formal protest on June 1, 1898. Minister Harold Sewall, from the U.S. Legation in Honolulu, notified Secretary of State William R. Day of the Spanish protest in a dispatch dated June 8. Renjes declared, “In my capacity as Vice Consul for Spain, I have the honor today to enter a formal protest with the Hawaiian Government against the constant violations of Neutrality in this harbor, while actual war exists between Spain and the United States of America.”⁵⁴ A second convoy of troops bound for the Philippines, on the transport ships the *China*, *Zelandia*, *Colon*, and the *Senator*, arrived in Honolulu on June 23, and took on 1,667 tons of coal.⁵⁵
- 5.5. In a secret session of the U.S. Senate on May 31, 1898, Senator William Chandler warned of the consequences *Alabama claims* arbitration (Geneva award), whereby Great Britain was found guilty of violating its neutrality during the American Civil War and compensated the United States with 15.5 million dollars in gold.

Senator Chandler cautioned the Senate. “What I said was that if we destroyed the neutrality of Hawai‘i Spain would have a claim against Hawai‘i which she could enforce according to the principles of the Geneva Award and make Hawai‘i, if she were able to do it, pay for

⁵² 31 U.S. CONG. REC., 55th Congress, 2nd Session, 5771.

⁵³ U.S. Minister to Hawai‘i Harold Sewall to U.S. Secretary of State William R. Day, No. 167, (June 4, 1898), Hawai‘i Archives.

⁵⁴ *Id.*, No. 168 (June 8, 1898).

⁵⁵ *Id.*, No. 175 (June 27, 1898).

every dollar's worth of damage done to the ships of property of Spain by the fleet that may go out of Hawai'i."⁵⁶

He later asked Senator Stephen White, "whether he is willing to have the Navy and Army of the U.S. violate the neutrality of Hawai'i?"⁵⁷

Senator White responded, "I am not, as everybody knows, a soldier, nor am I familiar with military affairs, but if I were conducting this Govt. and fighting Spain I would proceed so far as Spain was concerned just as I saw fit."⁵⁸

Senator Henry Cabot Lodge answered Senator White's question directly. "I should have argued then what has been argued ably since we came into secret legislative session, that at this moment the Administration was compelled to violate the neutrality of those islands, that protests from foreign representatives had already been received and complications with other powers were threatened, that the annexation or some action in regard to those islands had become a military necessity."⁵⁹

- 5.6. The transcripts of the Senate's secret session were not made public until 1969, after the Senate passed a resolution authorizing the U.S. National Archives to open the records. The Associated Press in Washington, D.C., reported, that "the secrecy was clamped on during a debate over whether to seize the Hawaiian Islands—called the Sandwich Islands then—or merely developing leased areas of Pearl Harbor to reinforce the U.S. fleet at Manila Bay."⁶⁰ Concealed by the debating rhetoric of congressional authority to annex foreign territory, the true intent of the Senate, as divulged in these transcripts, was to have the joint resolution serve merely as consent, on the part of the Congress, for the President to utilize his war powers in the occupation and seizure of the Hawaiian Islands as a matter of military necessity.
- 5.7. Commenting on the United States flagrant violation of Hawaiian neutrality, T.A. Bailey stated,

The position of the United States was all the more reprehensible in that she was compelling a weak nation to violate the international law that had to a large degree been formulated by her own stand on the Alabama claims. Furthermore, in line with the precedent established by the Geneva award, Hawai'i would be liable for every cent of damage caused by her dereliction as a neutral, and for the United States to force her into this position was cowardly and

⁵⁶ "Transcript of the Senate Secret Session on Seizure of the Hawaiian Islands, May 31, 1898," 1 HAW. J. L. & POL. 278 (Summer 2004).

⁵⁷ *Id.*, 279.

⁵⁸ *Id.*

⁵⁹ *Id.*, 280.

⁶⁰ Associated Press, "Secret Debate on U.S. Seizure of Hawaii Revealed," *Honolulu Star-Bulletin*, A1 (February 1, 1969).

ungrateful. At the end of the war, Spain or cooperating power would doubtless occupy Hawai‘i, indefinitely if not permanently, to insure payment of damages, with the consequent jeopardizing of the defenses of the Pacific Coast.”⁶¹

- 5.8. Unable to procure a treaty of cession acquiring the Hawaiian Islands as required by international law, Congress unilaterally enacted a *Joint Resolution To provide for annexing the Hawaiian Islands to the United States*, which was signed into law by President McKinley on July 7, 1898 during the Spanish-American War.⁶² The territorial limitation of Congressional laws are indisputable, and to quote from the United States Supreme Court:

“Neither the Constitution nor the laws passed in pursuance of it have any force in foreign territory unless in respect of our own citizens..., and operations of the nation in such territory must be governed by treaties, international understandings and compacts, and the principles of international law. As a member of the family of nations, the right and power of the United States in that field are equal to the right and power of the other members of the international family. Otherwise, the United States is not completely sovereign.”⁶³

- 5.9. Many government officials and constitutional scholars were at a loss in explaining how a joint resolution could have extra-territorial force in annexing Hawai‘i, a foreign and sovereign state, because during the 19th century, as Born states, “American courts, commentators, and other authorities understood international law as imposing strict territorial limits on national assertions of legislative jurisdiction.”⁶⁴ During the debate in Congress, Representative Thomas H. Ball (D-Texas) characterized the annexation of the Hawaiian state by joint resolution as “a deliberate attempt to do unlawfully that which can not be lawfully done.”⁶⁵ Westel Willoughby, a U.S. constitutional scholar at the time, explained the quandary.

The constitutionality of the annexation of Hawai‘i, by a simple legislative act, was strenuously contested at the time both in Congress and by the press. The right to annex by treaty was not denied, but it was denied that this might be done by a simple legislative act...Only by means of treaties, it was asserted, can the relations between [s]tates be governed, for a legislative act is necessarily without extraterritorial force—confined in its operation to the territory of the [s]tate by whose legislature it is enacted.⁶⁶

⁶¹ T.A. Bailey, *The United States and Hawaii During the Spanish-American War*, 36(3) AM. HIST. REV. 557 (April 1931).

⁶² 30 U.S. Stat. 750.

⁶³ *United States v. Curtiss Wright Export Corp.*, 299 U.S. 304, 318 (1936).

⁶⁴ GARY BORN, *INTERNATIONAL CIVIL LITIGATION IN UNITED STATES COURTS* 493 (3rd ed. 1996).

⁶⁵ 31 U.S. CONG. REC. 5975 (1898).

⁶⁶ WESTEL WILLOUGHBY, *THE CONSTITUTIONAL LAW OF THE UNITED STATES* Westel Willoughby, (2nd ed. 1929), 427.

- 5.10. The citizenry and residents of the Hawaiian Kingdom also understood the illegality of the joint resolution. On October 20, 1900, the following editorial was published in the Maui News newspaper making reference to statements made by Thomas Clark who was formerly British, but acquired Hawaiian citizenship through naturalization in 1867. Clark was also a signatory to the 21,269 signature petition against the treaty of annexation that was before the United States Senate.

Thomas Clark, a candidate for Territorial senator from Maui, holds that it was an unconstitutional proceeding on the part of the United States to annex the Islands without a treaty, and that as a matter of fact, the Island[s] are not annexed, and cannot be, and that if the democrats come in to power they will show the thing up in its true light and demonstrate that...the Islands are de facto independent at the present time.⁶⁷

- 5.11. In 1988, the U.S. Department of Justice concurred with Willoughby in a legal opinion. “It is therefore unclear which constitutional power Congress exercised when it acquired Hawaii by joint resolution. Accordingly, it is doubtful that the acquisition of Hawai‘i can serve as an appropriate precedent for a congressional assertion of sovereignty over an extended territorial sea.”⁶⁸
- 5.12. The Hawaiian Kingdom came under military occupation on August 12, 1898 at the height of the Spanish-American War, and the occupation was justified as a military necessity in order to reinforce and supply the troops that had been occupying the Spanish colonies of Guam and the Philippines since May 1, 1898. Following the close of the Spanish-American War by the Treaty of Paris,⁶⁹ United States troops remained in the Hawaiian Islands and continued its occupation to date in violation of international law and the 1893 *Lili‘uokalani assignment* and the *Agreement of restoration*. The United States Supreme Court has also confirmed that military occupation, which is deemed provisional, does not transfer sovereignty of the occupied state to the occupant state even when the *de jure* sovereign is deprived of power to exercise its right within the occupied territory.⁷⁰ Hyde states, in “consequence of belligerent

⁶⁷ The Maui News article available at: <http://hawaiiankingdom.org/blog/?p=189>.

⁶⁸ Douglas Kmiec, Department of Justice, *Legal Issues Raised by Proposed Presidential Proclamation To Extend the Territorial Sea*, in 12 OP. OFF. OF LEGAL COUNSEL 238, 252 (1988).

⁶⁹ 30 U.S. Stat. 1754.

⁷⁰ *Thirty Hogsheads of Sugar v. Boyle*, 13 U.S. 191 (1815); *United States v. Rice*, 17 U.S. 246 (1819); *Flemming v. Page*, 50 U.S. 603 (1850); see also United States Army Field Manual 27-10, Section 358—*Occupation Does Not Transfer Sovereignty*. Being an incident of war, military occupation confers upon the invading force the means of exercising control for the period of occupation. It does not transfer the sovereignty to the occupant, but simply the authority or power to exercise some of the rights of sovereignty. The exercise of these rights results from the established power of the occupant and from the necessity of maintaining law and order, indispensable both to the inhabitants and to the occupying force. It is therefore unlawful for a belligerent occupant to annex occupied territory or to create a new State therein while hostilities are still in progress.

occupation, the inhabitants of the district find themselves subjected to a new and peculiar relationship to an alien ruler to whom obedience is due.”⁷¹

- 5.13. In 1900, President McKinley signed into United States law *An Act To provide a government for the Territory of Hawai‘i*,⁷² which succeeded the Republic of Hawai‘i as an Armed Force. Further usurping Hawaiian sovereignty in 1959, President Eisenhower signed into United States law *An Act To provide for the admission of the State of Hawai‘i into the Union*, hereinafter “Statehood Act,” which succeeded the Territory of Hawai‘i as an Armed Force and not a government.⁷³ These laws, which have no extraterritorial effect, stand in direct violation of the *Lili‘uokalani assignment* and *Agreement restoration*, being international compacts, the HC IV, and the GC IV. Therefore, these entities, as Armed Forces, cannot be construed to be public in nature, but rather are private entities.
- 5.14. In 1946, prior to the passage of the Statehood Act, the United States further misrepresented its relationship with Hawai‘i when its permanent representative to the United Nations identified Hawai‘i as a non-self-governing territory under the administration of the United States since 1898. In accordance with Article 73(e) of the U.N. Charter, the United States permanent representative erroneously reported Hawai‘i as a non-self-governing territory that was acknowledged in a resolution by United Nations General Assembly.⁷⁴ On June 4, 1952, the Secretary General of the United Nations reported information submitted to him by the permanent representative of the United States regarding American Samoa, Hawai‘i, Puerto Rico and the Virgin Islands.⁷⁵ In this report, the United States made no mention that the Hawaiian Islands were an independent state since 1843 and that its government was illegally overthrown by U.S. forces, which was later settled by an executive agreement through *exchange of notes*. The representative also fails to disclose diplomatic protests that succeeded in preventing the second attempt to annex the Islands by a treaty of cession in 1897. Instead, the representative provides a picture of Hawai‘i as a non-state nation, by stating:

“The Hawaiian Islands were discovered by James Cook in 1778. At that time divided into several petty chieftainships, they were soon afterwards united into one kingdom. The Islands became an important port and recruiting point for the early fur and sandalwood

⁷¹ CHARLES CHENEY HYDE, INTERNATIONAL LAW CHIEFLY AS INTERPRETED AND APPLIED BY THE UNITED STATES 363 (Vol. II, 1922).

⁷² 31 U.S. Stat. 141.

⁷³ 73 U.S. Stat. 4.

⁷⁴ *Transmission of Information under Article 73e of the Charter*, December 14, 1946, United Nations General Assembly Resolution 66(I).

⁷⁵ *Information from Non-self-governing Territories: Summary and Analysis of Information Transmitted Under Article 73 e of the Charter. Report of the Secretary General: Summary of Information transmitted by the Government of the United States of America*, 4 June 1952, United Nations, Document A/2135.

traders in the North Pacific, and the principal field base for the extensive whaling trade. When whaling declined after 1860, sugar became the foundation of the economy, and was stimulated by a reciprocity treaty with the United States (1876).

American missionaries went to Hawaii in 1820; they reduced the Hawaiian language to written form, established a school system, and gained great influence among the ruling chiefs. In contact with foreigners and western culture, the aboriginal population steadily declined. To replace this loss and to furnish labourers for the expanding sugar plantations, large-scale immigration was established.

When later Hawaiian monarchs showed a tendency to revert to absolutism, political discords and economic stresses produced a revolutionary movement headed by men of foreign birth and ancestry. The Native monarch was overthrown in 1893, and a republic government established. Annexation to the United States was one aim of the revolutionists. After a delay of five years, annexation was accomplished.

...The Hawaiian Islands, by virtue of the Joint Resolution of Annexation and the Hawaiian Organic Act, became an integral part of the United States and were given a territorial form of government which, in the United States political system, precedes statehood.”⁷⁶

- 5.15. In 1959, the Secretary General received a communication from the United States permanent representative that they will no longer transmit information regarding Hawai‘i because it supposedly “became one of the United States under a new constitution taking affect on [August 21, 1959].”⁷⁷ This resulted in a General Assembly resolution stating it “Considers it appropriate that the transmission of information in respect of Alaska and Hawaii under Article 73e of the Charter should cease.”⁷⁸ Evidence that the United Nations was not aware of Hawaiian independence since 1843 can be gleaned from the following statement by the United Nations.

“Though the General Assembly considered that the manner in which Territories could become fully self-governing was primarily through the attainment of independence, it was observed in the Fourth Committee that the General Assembly had recognized in resolution 748 (VIII) that self-government could also be achieved by association with another [s]tate or group of [s]tates if the association was freely chosen and was on a basis of absolute equality. There was unanimous agreement that Alaska and Hawaii had attained a full measure of self-government and equal to that enjoyed by all other

⁷⁶ *Id.*, at 16-17.

⁷⁷ *Cessation of the transmission of information under Article 73e of the Charter: communication from the Government of the United States of America*, United Nations, Document no. A/4226, at 99.

⁷⁸ *Cessation of the transmission of information under Article 73 e of the Charter in respect of Alaska and Hawaii*, December 12, 1959, United Nations General Assembly Resolution 1469 (XIV).

self-governing constituent [S]tates of the United States. Moreover, the people of Alaska and Hawaii had fully exercised their right to choose their own form of government.”⁷⁹

- 5.16. Although the United Nations passed two resolutions acknowledging Hawai‘i to be a non-self-governing territory that has been under the administration of the United States of America since 1898 and was granted self-governance in 1959, it did not affect the continuity of the Hawaiian state because, foremost, United Nations resolutions are not binding on member states of the United Nations,⁸⁰ let alone a non-member state—the Hawaiian Kingdom. Crawford explains, “Of course, the General Assembly is not a legislature. Mostly its resolutions are only recommendations, and it has no capacity to impose new legal obligations on [s]tates.”⁸¹ Secondly, the information provided to the General Assembly by the United States was distorted and flawed. In *East Timor*, Portugal argued that resolutions of both the General Assembly and the Security Council acknowledged the status of East Timor as a non-self-governing territory and Portugal as the administering power and should be treated as “givens.”⁸² The International Court of Justice, however, did not agree and found

“that it cannot be inferred from the sole fact that the above-mentioned resolutions of the General Assembly and the Security Council refer to Portugal as the administering Power of East Timor that they intended to establish an obligation on third [s]tates.”⁸³

Even more problematic is when the decisions embodied in the resolutions as “givens” are wrong. Acknowledging this possibility, Bowett states, “where a decision affects a [s]tate’s legal rights or responsibilities, and can be shown to be unsupported by the facts, or based upon a quite erroneous view of the facts, or a clear error of law, the decision ought in principle to be set aside.”⁸⁴ Öberg also concurs and acknowledges that resolutions “may have been made on the basis of partial information, where not all interested parties were heard, and/or too urgently for the facts to be objectively established.”⁸⁵ As an example, Öberg cited Security Council Resolution 1530, March 11, 2004, that “misidentified the perpetrator of the bomb attacks carried out in Madrid, Spain, on the same day.”⁸⁶

⁷⁹ *Repertory of Practice of United Nations Organs, Extracts relating to Article 73 of the Charter of the United Nations*, Supplement No. 1 (1955-1959), volume 3, at 200, para. 101.

⁸⁰ IAN BROWNLIE, *PRINCIPLES OF PUBLIC INTERNATIONAL LAW* 14 (4th ed. 1990).

⁸¹ See CRAWFORD, *supra* note 20, at 113.

⁸² In *East Timor* (Portugal v. Australia) [1995] ICJ Rep. 90, at 103, para. 30.

⁸³ *Id.*, at 104, para. 32.

⁸⁴ Derek Bowett, *The Impact of Security Council Decisions on Dispute Settlement Procedures*, 5 EUR. J. INT’L L. 89, 97 (1994).

⁸⁵ Marko Divac Öberg, *The Legal Effects of Resolutions of the UN Security Council and General Assembly in the Jurisprudence of the ICJ*, 16(5) EUR. J. INT’L L. 879, 892 (2005).

⁸⁶ *Id.*, at n. 82.

6. MILITARIZATION OF THE HAWAIIAN KINGDOM

- 6.1. For the past century, the Hawaiian Kingdom has served as a base of military operations for United States troops during World War I and World War II. In 1947, the United States Pacific Command (USPACOM), being a unified combatant command, was established as an outgrowth of the World War II command structure, with its headquarters on the Island of O‘ahu. Since then, USPACOM has served as a base of military operations during the Korean War, the Vietnam War, the Gulf War, the Afghan War, the Iraq War, and the current war on terrorism. There are currently 118 U.S. military sites throughout the Hawaiian Kingdom that comprise 230,929 acres, which is 17% of Hawaiian territory.⁸⁷ The island of O‘ahu has the majority of military sites at 94,250 acres, which is 25% of the island.
- 6.2. The United States Navy’s Pacific Fleet headquartered at Pearl Harbor hosts the Rim of the Pacific Exercise (RIMPAC) every other even numbered year, which is the largest international maritime warfare exercise. RIMPAC is a multinational, sea control and power projection exercise that collectively consists of activity by the U.S. Army, Air Force, Marine Corps, and Naval forces, as well as military forces from other foreign States. During the month long exercise, RIMPAC training events and live fire exercises occur in open-ocean and at the military training locations throughout the Hawaiian Islands. In 2014, Australia, Brunei, Canada, Chile, Colombia, France, India, Indonesia, Japan, Malaysia, Mexico, Netherlands, New Zealand, Norway, People’s Republic of China, Peru, Republic of Korea, Republic of the Philippines, Singapore, Tonga, and the United Kingdom participated in the RIMPAC exercises.
- 6.3. Since the belligerent occupation by the United States began on August 12, 1898 during the Spanish-American War, the Hawaiian Kingdom, as a neutral state, has been in a state of war for over a century. Although it is not a state of war in the technical sense that was produced by a declaration of war, it is, however, a war in the material sense that Dinstein says, is “generated by actual use of armed force, which must be comprehensive on the part of at least one party to the conflict.”⁸⁸ The military action by the United States on August 12, 1898 against the Hawaiian Kingdom triggered the change from a state of peace into a state of war—*jus in bello*, where the laws of war would apply.

⁸⁷ U.S. military training locations on the Island of Kaua‘i: Pacific Missile Range Facility, Barking Sands Tactical Underwater Range, and Barking Sands Underwater Range Expansion; the entire Islands of Ni‘ihau and Ka‘ula; on the Island of O‘ahu: Pearl Harbor, Lima Landing, Pu‘uloa Underwater Range—Pearl Harbor, Barbers Point Underwater Range, Coast Guard AS Barbers Point/Kalaeloa Airport, Marine Corps Base Hawai‘i, Marine Corps Training Area Bellows, Hickam Air Force Base, Kahuku Training Area, Makua Military Reservation, Dillingham Military Reservation, Wheeler Army Airfield, and Schofield Barracks on the Island of O‘ahu; and on the Island of Hawai‘i: Bradshaw Army Airfield and Pohakuloa Training Area.

⁸⁸ YORAM DINSTEIN, *WAR, AGGRESSION AND SELF-DEFENSE*, 16 (2nd ed. 1994).

- 6.4. When neutral territory is occupied, however, the laws of war are not applied in its entirety. According to Sakuye Takahashi, Japan limited its application of the Hague Convention to its occupation of Manchuria, being a province of a neutral China, in its war against Russia, to Article 42—on the elements and sphere of military occupation, Article 43—on the duty of the occupant to respect the laws in force in the country, Article 46—concerning family honour and rights, the lives of individuals and their private property as well as their religious conviction and the right of public worship, Article 47—on prohibiting pillage, Article 49—on collecting the taxes, Article 50—on collective penalty, pecuniary or otherwise, Article 51—on collecting contributions, Article 53—concerning properties belonging to the state or private individuals, which may be useful in military operations, Article 54—on material coming from neutral states, and Article 56—on the protection of establishments consecrated to religious, warship, charity, etc.⁸⁹
- 6.5. Hawai‘i’s situation was anomalous and without precedent. The closest similarity to the Hawaiian situation would not take place until sixteen years later when Germany occupied the neutral states of Belgium and Luxembourg in its war against France from 1914-1919. The Allies considered Germany’s actions against these neutral states to be acts of aggression. According to Garner, the “immunity of a neutral state from occupation by a belligerent is not dependent upon special treaties, but is guaranteed by the Hague convention as well as the customary law of nations.”⁹⁰

B. THE CONTINUITY OF THE HAWAIIAN KINGDOM

7. *GENERAL CONSIDERATIONS*

- 7.1. The issue of state continuity usually arises in cases in which some element of the state has undergone some significant transformation, such as changes in its territory or in its form of government. A claim as to state continuity is essentially a claim as to the continued independent existence of a state for purposes of international law in spite of such changes. It is predicated, in that regard, upon an insistence that the state’s legal identity has remained intact. If the state concerned retains its identity it can be considered to “continue” and *vice versa*. Discontinuity, by contrast, supposes that the identity of the state has been lost or fundamentally altered in such a way that it has ceased to exist as an independent state and, as a consequence, rights of sovereignty in relation to territory and population have been assumed by another “successor” state to the extent provided by the rules of succession. At its heart, therefore, the issue of state continuity is concerned with the parameters of a state’s existence and demise, or extinction, in international law.

⁸⁹ SAKUYE TAKAHASHI, *INTERNATIONAL LAW APPLIED TO THE RUSSO-JAPANESE WAR* 251 (1908).

⁹⁰ JAMES WILFORD GARNER, *INTERNATIONAL LAW AND THE WORLD WAR*, 251 (Vol. II 1920).

- 7.2. The claim of state continuity on the part of the Hawaiian Kingdom has to be opposed as against a claim by the United States as to its succession. It is apparent, however, that this opposition is not a strict one. Principles of succession may operate even in cases where continuity is not called into question, such as with the cession of a portion of territory from one state to another, or occasionally in case of unification. Continuity and succession are, in other words, not always mutually exclusive but might operate in tandem. It is evident, furthermore, that the principles of continuity and succession may not actually differ a great deal in terms of their effect.
- 7.3. Even if it is relatively clear as to when states may be said to come into being for purposes of international law, the converse is far from being the case. Beyond the theoretical circumstance in which a body politic has dissolved, *e.g.* by submergence of the territory or the dispersal of the population, it is apparent that all cases of putative extinction will arise in cases where certain changes of a material nature have occurred—such as a change in government and change in the territorial configuration of the state. The difficulty, however, is in determining when such changes are merely incidental, leaving intact the identity of the state, and when they are to be regarded as fundamental going to the heart of that identity. It is evident, moreover, that states are complex political communities possessing various attributes of an abstract nature which vary in space as well as time, and, as such, determining the point at which changes in those attributes are such as to affect the state's identity will inevitably call for very fine distinctions.
- 7.4. It is generally held, nevertheless, that there exist several uncontroversial principles that have some bearing upon the issue of continuity. These are essentially threefold, all of which assume an essentially negative form. First, that the continuity of the state is not affected by changes in government even if of a revolutionary nature. Secondly, that continuity is not affected by territorial acquisition or loss, and finally that it is not affected by military occupation. Crawford points out that,

“There is a strong presumption that the [s]tate continues to exist, with its rights and obligations, despite revolutionary changes in government, or despite a period in which there is no, or no effective, government. Belligerent occupation does not affect the continuity of the [s]tate, even where there exists no government claiming to represent the occupied [s]tate.”⁹¹

Furthermore, the dictum of the Permanent Court of Arbitration in *Larsen v. Hawaiian Kingdom* acknowledging the Hawaiian Kingdom to be an independent State in the nineteenth century is also *presumptive evidence*, “which must be received and treated as true and sufficient until and unless

⁹¹ See CRAWFORD, *supra* note 20, at 34.

rebutted by other evidence,”⁹² *i.e.* evidence of the Hawaiian state and its continuity shall be the presumption unless rebutted.

- 7.5. Each of these principles reflects upon one of the key incidents of statehood—territory, government (legal order) and independence—making clear that the issue of continuity is essentially one concerned with the existence of states: unless one or more of the key constituents of statehood are entirely and permanently lost, state identity will be retained. Their negative formulation, furthermore, implies that there exists a general presumption of continuity. As Hall was to express the point, a state retains its identity

“so long as the corporate person undergoes no change which essentially modifies it from the point of view of its international relations, and with reference to them it is evident that no change is essential which leaves untouched the capacity of the state to give effect to its general legal obligations or to carry out its special contracts.”⁹³

The only exception to this general principle is to be found in case of multiple changes of a less than total nature, such as where a revolutionary change in government is accompanied by a broad change in the territorial delimitation of the state.⁹⁴

- 7.6. If one were to speak about a presumption of continuity, one would suppose that an obligation would lie upon the party opposing that continuity to establish the facts substantiating its rebuttal. The continuity of the Hawaiian Kingdom, in other words, may be refuted only by reference to a valid demonstration of legal title, or sovereignty, on the part of the United States, absent of which the presumption remains. It might be objected that formally speaking, the survival or otherwise of a state should be regarded as independent of the legitimacy of any claims to its territory on the part of other states. It is commonly recognized that a state does not cease to be such merely in virtue of the existence of legitimate claims over part or parts of its territory. Nevertheless, where those claims comprise the entirety of the territory of the state, as they do in case of Hawai’i, and when they are accompanied by effective governance to the exclusion of the Hawaiian Kingdom, it is difficult, if not impossible, to separate the two questions. The survival of the Hawaiian Kingdom is, it seems, premised upon the “legal” basis of present or past United States claims to sovereignty over the Islands.

- 7.7. In light of such considerations, any claim to state continuity will be dependent upon the establishment of two legal facts: *first*, that the state in question existed as a recognized entity for purposes of international law at some

⁹² BLACK’S LAW DICTIONARY 1186 (6th ed. 1990).

⁹³ See HALL, *supra* note 23, at 22.

⁹⁴ See generally, KRYSZYNA MAREK, IDENTITY AND CONTINUITY OF STATES IN PUBLIC INTERNATIONAL LAW (2nd ed. 1968).

relevant point in history; and, *secondly*, that intervening events have not been such as to deprive it of that status. It should be made very clear, however, that the issue is not simply one of “observable” or “tangible facts,” but more specifically of “legally relevant facts.” It is not a case, in other words, simply of observing how power or control has been exercised in relation to persons or territory, but of determining the scope of “authority,” which is understood as “a legal entitlement to exercise power and control.” Authority differs from mere control by not only being essentially rule-governed, but also in virtue of the fact that it is not always entirely dependent upon the exercise of that control. As Arbitrator Huber noted in the *Island of Palmas Case*:

“Manifestations of sovereignty assume... different forms according to conditions of time and place. Although continuous in principle, sovereignty cannot be exercised in fact at every moment on every point of a territory. The intermittence and discontinuity compatible with the maintenance of the right necessarily differ according as inhabited or uninhabited regions are involved, or regions enclosed within territories in which sovereignty is incontestably displayed or again regions accessible from, for instance, the high seas.”⁹⁵

- 7.8. Thus, while “the continuous and peaceful display of territorial sovereignty” remains an important measure for determining entitlements in cases where title is disputed, or where “no conventional line of sufficient topographical precision exists,” it is not always an indispensable prerequisite for legal title. This has become all the more apparent since the prohibition on the annexation of territory became firmly implanted in international law, and with it the acceptance that certain factual situations will not be accorded legal recognition, *ex inuria ius non oritur*.
- 7.9. In light of the evident existence of Hawai’i as a sovereign state for some period of time prior to 1898, it would seem that the issue of continuity turns upon the question whether Hawai’i can be said to have subsequently ceased to exist according to the terms of international law. Current international law recognizes that a state may cease to exist in one of two scenarios: *first*, by means of that state’s integration with another state in some form of union; or, *second*, by its dismemberment, such as in the case of the Socialist Federal Republic of Yugoslavia or Czechoslovakia. As will be seen, events in Hawai’i in 1898 are capable of being construed in several ways, but it is evident that the most obvious characterization was one of cession by joint resolution of the Congress.
- 7.10. Turning then to the law as it existed at the critical date of 1898, it was generally held that a state might cease to exist in one of three scenarios:

⁹⁵ *Island of Palmas Case (Netherlands v. United States)* 2 R.I.A.A. 829.

- (a) By the destruction of its territory or by the extinction, dispersal or emigration of its population, which is a theoretical disposition.
- (b) By the dissolution of the corpus of the state.⁹⁶
- (c) By the state's incorporation, union, or submission to another.⁹⁷

7.11. Neither (a) nor (b) is applicable in the current scenario. In case of (c) commentators have often distinguished between two processes—one of which involved a voluntary act, *i.e.* union or incorporation, the other of which came about by non-consensual means, *i.e.* conquest and submission followed by annexation.⁹⁸ It is evident that annexation or “conquest” was regarded as a legitimate mode of acquiring title to territory,⁹⁹ and it would seem to follow that in case of total annexation—annexation of the entirety of the territory of a state, the defeated state would cease to exist.

7.12. Although annexation was regarded as a legitimate means of acquiring territory, it was recognized as taking a variety of forms.¹⁰⁰ It was apparent that a distinction was typically drawn between those cases in which the annexation was implemented by a Treaty of Peace, and those which resulted from an essentially unilateral public declaration on the part of the annexing power after the defeat of the opposing state, which the former was at war with. The former would be governed by the particular terms of the treaty in question, and give rise to a distinct type of title.¹⁰¹ Since treaties were regarded as binding irrespective of the circumstances surrounding their conclusion and irrespective of the presence or absence of coercion,¹⁰² title acquired in virtue of a peace treaty was considered to be essentially derivative, *i.e.* being transferred from one state to another. There was little, in other words, to distinguish title acquired by means of a treaty of peace backed by force, and a voluntary purchase of territory: in each case the extent of rights enjoyed by the successor were determined by the agreement itself. In case of conquest absent an agreed settlement, by contrast, title was thought to derive simply from the fact of military subjugation and was complete “from the time [the conqueror] proves his ability to maintain his sovereignty over his conquest, and manifests, by some authoritative act... his intention to retain it as part of

⁹⁶ Cases include the dissolution of the German Empire in 1805-6; the partition of the Pays-Bas in 1831 or of the Canton of Bale in 1833

⁹⁷ Cases include the incorporation of Cracow into Austria in 1846; the annexation of Nice and Savoy by France in 1860; the annexation of Hannover, Hesse, Nassau and Schleswig-Holstein and Frankfurt into Prussia in 1886.

⁹⁸ See J. Westlake, *The Nature and Extent of the Title by Conquest*, 17 L. Q. REV. 392 (1901).

⁹⁹ LASSA OPPENHEIM, *INTERNATIONAL LAW*, VOL. I, 288 (9th ed. 1996), Oppenheim remarks that “[a]s long as a Law of Nations has been in existence, the states as well as the vast majority of writers have recognized subjugation as a mode of acquiring territory.”

¹⁰⁰ HENRY HALLECK, *INTERNATIONAL LAW*, 811 (1861); HENRY WHEATON, *ELEMENTS OF INTERNATIONAL LAW II*, c. iv, s. 165. (8th ed. 1866).

¹⁰¹ See LAWRENCE, *supra* note 24, at 165-6 (“Title by conquest arises only when no formal international document transfers the territory to its new possessor.”)

¹⁰² Vienna Convention on the Law of Treaties, art. 52 (1969).

his own territory.”¹⁰³ What was required, in other words, was that the conflict be complete—acquisition of sovereignty *durante bello* being clearly excluded, and that the conqueror declare an intention to annex.¹⁰⁴

7.13. What remained a matter of some dispute, however, was whether annexation by way of subjugation should be regarded as an original or derivative title to territory and, as such, whether it gave rise to rights in virtue of mere occupation, or rather more extensive rights in virtue of succession—a point of particular importance for possessions held in foreign territory.¹⁰⁵ Rivier, for example, took the view that conquest involved a three stage process: a) the extinction of the state in virtue of *debellatio* which b) rendered the territory *terra nullius* leading to c) the acquisition of title by means of occupation.¹⁰⁶ Title, in other words, was original, and rights of the occupants were limited to those which they possessed perhaps under the doctrine *uti possidetis de facto*. Others, by contrast, seemed to assume some form of “transfer of title” as taking place, *i.e.* that conquest gave rise to a derivative title,¹⁰⁷ and concluded in consequence that the conqueror “becomes, as it were, the heir or universal successor of the defunct or extinguished [s]tate.”¹⁰⁸ Much depended, in such circumstances, as to how the successor came to acquire title.

7.14. It should be pointed out, however, that even if annexation/conquest was generally regarded as a mode of acquiring territory, United States policy during this period was far more skeptical of such practice. As early as 1823 the United States had explicitly opposed, in the form of the Monroe Doctrine, the practice of European colonization¹⁰⁹ and in the First Pan-American Conference of 1889 and 1890 it had proposed a resolution to the effect that “the principle of conquest shall not...be recognized as admissible under American public law.”¹¹⁰ It had, furthermore, later taken the lead in adopting a policy of non-recognition of “any situation, treaty, or agreement which may be brought about by means contrary to the covenants and obligations of the Pact of Paris of August 27, 1928”¹¹¹ which was confirmed as a legal obligation in a resolution of the Assembly of the League of Nations in 1932. Even if such a policy was not to amount to a legally binding commitment on the part

¹⁰³ HENRY HALLECK, *INTERNATIONAL LAW*, 468 (3rd ed. 1893).

¹⁰⁴ This point was of considerable importance following the Allied occupation of Germany in 1945.

¹⁰⁵ For an early version of this idea see EMERICH DE VATTTEL, *THE LAW OF NATIONS OR THE PRINCIPLES OF NATURAL LAW*, BK. III, SEC. 193-201 (1758, trans. C. Fenwick, 1916). C. BYNKERSHOEK, *QUAESTIONUM JURIS PUBLICI LIBRI DUO*, BK. I, 32-46 (1737, trans. Frank T., 1930).

¹⁰⁶ RIVIER, *PRINCIPES DU DROIT DES GENS*, VOL. I, 182 (1896).

¹⁰⁷ See PHILLIMORE, *supra* note 22, I, at 328.

¹⁰⁸ See HALLECK, *supra* note 97, at 495.

¹⁰⁹ “The American continents, by the free and independent conditions which they have assumed and maintained, are henceforth not to be considered as subjects for future colonization by any European Powers.” James Monroe, Message to Congress, December 2, 1823.

¹¹⁰ JOHN BASSET MOORE, *A DIGEST OF INTERNATIONAL LAW*, VOL. 1, 292 (1906).

¹¹¹ J.W. WHEELER-BENNETT (ED.), *DOCUMENTS ON INTERNATIONAL AFFAIRS 1932-23* (1933). See also David Turns, *The Stimson Doctrine of Non-Recognition: Its Historical Genesis and Influence on Contemporary International Law*, 2 *CHINESE J. INT’L L.* 105-143 (2003).

of the United States not to acquire territory by use or threat of force during the latter stages of the 19th century, there is the doctrine of estoppel that would operate to prevent the United States subsequently relying upon forcible annexation as a basis for claiming title to the Hawaiian Islands. Furthermore, annexation by conquest clearly would not apply to the case at hand because the Hawaiian Kingdom was never at war with the United States thereby preventing *debellatio* from arising as a mode of acquisition.

8. THE FUNCTION OF ESTOPPEL

8.1. The principle that a state cannot benefit from its own wrongful act is a general principle of international law referred to as estoppel.¹¹² The rationale for this rule derives from the *maxim pacta sunt servanda*—every treaty in force is binding upon the parties and must be performed by them in good faith,¹¹³ and “operates so as to preclude a party from denying the truth of a statement of fact made previously by that party to another whereby that other has acted to his detriment.”¹¹⁴ According to MacGibbon, underlying “most formulations of the doctrine of estoppel in international law is the requirement that a [s]tate ought to be consistent in its attitude to a given factual or legal situation.”¹¹⁵ In municipal jurisdictions there are three forms of estoppel—estoppel by judgment as in matters of court decisions; estoppel by deed as in matters of written agreement or contract; and estoppel by conduct as in matters of statements and actions. Bowett states that these forms of estoppel, whether treated as a rule of evidence or as substantive law, are as much part of international law as they are in municipal law, and due to the diplomatic nature of states relations, he expands the second form of estoppel to include estoppel by “Treaty, Compromise, Exchange of Notes, or other Undertaking in Writing.”¹¹⁶ Brownlie states that because estoppel in international law rests on principles of good faith and consistency, it is “shorn of the technical features to be found in municipal law.”¹¹⁷ Bowett enumerates the three essentials establishing estoppel in international law:

1. The statement of fact must be clear and unambiguous.
2. The statement of fact must be made voluntarily, unconditionally, and must be authorized.
3. There must be reliance in good faith upon the statement either to the detriment of the party so relying on the statement or to the advantage of the party making the statement.¹¹⁸

¹¹² WILLIAM EDWARD HALL, *A TREATISE ON INTERNATIONAL LAW* 383 (8th ed. 1924).

¹¹³ See Vienna Convention, *supra* note 99, art. 26.

¹¹⁴ D.W. Bowett, *Estoppel Before International Tribunals and its Relation to Acquiescence*, 33 BRIT. Y. B. INT’L L. 201 (1957).

¹¹⁵ I.C. MacGibbon, *Estoppel in International Law*, 7 INT’L. & COMP. L. Q. 468 (1958).

¹¹⁶ See Bowett, *supra* note 111, at 181.

¹¹⁷ See BROWNLIE, *supra* note 77, at 641.

¹¹⁸ See Bowett, *supra* note 111, at 202.

- 8.2. To ensure consistency in state behavior, the Permanent Court of International Justice, in a number of cases, affirmed the principle “that a [s]tate cannot invoke its municipal law as a reason for failure to fulfill its international obligation.”¹¹⁹ This principle was later codified under Article 27 of the 1969 Vienna Convention on the Law of Treaties, whereby “a party may not invoke the provisions of its internal law as justification for its failure to perform a treaty.”¹²⁰ It is self-evident that the 1893 *Lili‘uokalani assignment* and the *Agreement of restoration* meets the requirements of the first two essentials establishing estoppel, and, as for the third, reliance in good faith was clearly displayed and evidence in a memorial to President Cleveland by the Hawaiian Patriotic League on December 27, 1893. As stated in the memorial:

“And while waiting for the result of [the investigation], with full confidence in the American honor, the Queen requested all her loyal subjects to remain absolutely quiet and passive, and to submit with patience to all the insults that have been since heaped upon both the Queen and the people by the usurping Government. The necessity of this attitude of absolute inactivity on the part of the Hawaiian people was further indorsed and emphasized by Commissioner Blount, so that, if the Hawaiians have held their peace in a manner that will vindicate their character as law-abiding citizens, yet it can not and must not be construed as evidence that they are apathetic or indifferent, or ready to acquiesce in the wrong and bow to the usurpers.”¹²¹

- 8.3. Continued reliance was also displayed by the formal protests of the Queen and Hawaiian political organizations regarding the aforementioned second treaty of cession signed in Washington, D.C., on June 16, 1897. These protests were received and filed in the office of Secretary of State John Sherman and continue to remain a record of both dissent and evidence of reliance upon the conclusion of the investigation by President Cleveland and his obligation and commitment to *restitutio in integrum*—restoration of the *de jure* Hawaiian government. A memorial of the Hawaiian Patriotic League that was filed with the United States Hawaiian Commission for the creation of the territorial government appears to be the last “public” act of reliance made by a large majority of the Hawaiian citizenry.¹²² The Commission was established on July 8, 1898 after President McKinley signed the joint resolution of annexation on July 7, 1898, and held meetings in Honolulu from August through September of 1898. The memorial, which was also printed in two

¹¹⁹ Series A/B, No. 44 (1932) (*Polish Nationals in Danzig*), at 24; Series A, No. 24 (1930), at 12, and Series A/B, No. 46 (1932), at 167 (*Free Zones*); Series B, No. 17 (1930) (*Greco-Bulgarian Communities*), at 32.

¹²⁰ See Vienna Convention, *supra* note 99, art. 27.

¹²¹ See Executive Documents, *supra* note 29, at 1295, reprinted in 1 HAW. J.L. & POL. 217 (Summer 2004).

¹²² Munroe Smith, Record of Political Events, 13(4) POL. SCI. Q. 745, 752 (Dec. 1898).

Honolulu newspapers, one in the Hawaiian language¹²³ and the other in English,¹²⁴ stated, in part:

“WHEREAS: By memorial the people of Hawaii have protested against the consummation of an invasion of their political rights, and have fervently appealed to the President, the Congress and the People of the United States, to refrain from further participation in the wrongful annexation of Hawaii; and

WHEREAS: The Declaration of American Independence expresses that Governments derive their just powers from the consent of the governed:

THEREFORE, BE IT RESOLVED: That the representatives of a large and influential body of native Hawaiians, we solemnly pray that the constitutional government of the 16th day of January, A.D. 1893, be restored, under the protection of the United States of America.”

This memorial clearly speaks to the people’s understanding and reliance of the 1893 *Agreement of restoration* and the duties and obligations incurred by the United States even after the Islands were purportedly annexed.

8.4. There is no dispute between the United States and the Hawaiian Kingdom regarding the illegal overthrow of the *de jure* Hawaiian government, and the 1893 executive agreements—the *Lili‘uokalani assignment* and the *Agreement of restoration*, constitutes evidence of final settlement. As such, the United States cannot benefit from its deliberate non-performance of its obligation of administering Hawaiian law and restoring the *de jure* government under the 1893 executive agreements over the reliance held by the Hawaiian Kingdom and its citizenry in good faith and to their detriment. Therefore, the United States is estopped from asserting any of the following claims:

1. Recognition of any pretended government other than the Hawaiian Kingdom as both the *de facto* and the *de jure* government of the Hawaiian Islands;
2. Annexation of the Hawaiian Islands by joint resolution in 1898;
3. Establishment of a territorial government in 1900;
4. Administration of the Hawaiian Islands as a non-self-governing territory since 1898 pursuant to Article 73(e) of the U.N. Charter; and
5. Establishment of a State government in 1959.

8.5. The omission by the United States to restore the *de jure* government is a “breach of an international obligation,” and, therefore, an international wrongful act. The severity of this breach has led to the unlawful seizure of Hawaiian independence, imposition of a foreign nationality upon the citizenry

¹²³ *Memoriala A Ka Lahui* (Memorial of the Citizenry), KE ALOHA AINA, Sept. 17, 1898, at 3.

¹²⁴ *What Monarchists Want*, THE HAWAIIAN STAR, Sept. 15, 1898, at 3.

of an occupied state, mass migrations and settlement of foreign citizens, and the economic and military exploitation of Hawaiian territory—all stemming from the United States government’s violation of international law and treaties. In a 1999 report for the United Nations Centennial of the First International Peace Conference, Greenwood states:

“Accommodation of change in the case of prolonged occupation must be within the framework of the core principles laid down in the Regulations on the Laws and Customs of War on Land and the Fourth Convention, in particular, the principle underlying much of the Regulations on the Laws and Customs of War on Land, namely that the occupying power may not exploit the occupied territories for the benefit of its own population.”¹²⁵

Despite the egregious violations of Hawaiian state sovereignty by the United States since January 16, 1893, the principle of estoppel not only serves as a shield that bars the United States from asserting any legal claim of sovereignty over the Hawaiian Islands, but also a shield that protects the continued existence of the Hawaiian Kingdom, the nationality of its citizenry, and its territorial integrity as they existed in 1893. Additionally, the principle of *ex injuria jus non oritur*—unjust acts cannot create law, equally applies.

9. ACQUISITIVE PRESCRIPTION

- 9.1. As pointed out above, the continuity of the Hawaiian state may be refuted only by reference to a valid demonstration of legal title, or sovereignty, on the part of the United States, which is not strictly limited to annexation. The United States, in other words, would be entitled to maintain its claim over the Hawaiian Islands so long as it could show some basis for asserting that claim other than merely its original claim of annexation in 1898. The strongest type of claim in this respect is the “continuous and peaceful display of territorial sovereignty.” The emphasis given to the “continuous and peaceful display of territorial sovereignty” in international law derives in its origin from the doctrine of occupation, which allowed states to acquire title to territory that was effectively *terra nullius*. Occupation, in this form, is distinct from military occupation of another state’s territory. It is apparent, however, and in line with the approach of the International Court of Justice in the *Western Sahara Case*,¹²⁶ that the Hawaiian Islands cannot be regarded as *terra nullius* for purpose of acquiring title by mere occupation. According to some, nevertheless, effective occupation may give rise to title by way of what is known as “acquisitive prescription.”¹²⁷ As Hall maintained, title or sovereignty “by prescription arises out of a long continued possession, where

¹²⁵ CHRISTOPHER GREENWOOD, INTERNATIONAL HUMANITARIAN LAW (LAWS OF WAR): REVISED REPORT PREPARED FOR THE CENTENNIAL OF THE FIRST INTERNATIONAL PEACE CONFERENCE, PURSUANT TO UNITED NATIONS GENERAL ASSEMBLY RESOLUTIONS A/RES/52/154 AND A/RES/53/99, 47 (1999).

¹²⁶ I.C.J. Rep. 1975.

¹²⁷ For a discussion of the various approaches to this issue see OPPENHEIM, *supra* note 96, at 705-6.

no original source of proprietary right can be shown to exist, or where possession in the first instance being wrongful, the legitimate proprietor has neglected to assert his right, or has been unable to do so.”¹²⁸ Johnson explains in more detail:

“Acquisitive Prescription is the means by which, under international law, legal recognition is given to the right of a state to exercise sovereignty over land or sea territory in cases where that state has, in fact, exercised its authority in a continuous, uninterrupted, and peaceful manner over the area concerned for a sufficient period of time, provided that all other interested and affected states (in the case of land territory the previous possessor, in the case of sea territory neighboring states and other states whose maritime interests are affected) have acquiesced in this exercise of authority. Such acquiescence is implied in cases where the interested and affected states have failed within a reasonable time to refer the matter to the appropriate international organization or international tribunal or—exceptionally in cases where no such action was possible—have failed to manifest their opposition in a sufficiently positive manner through the instrumentality of diplomatic protests.”¹²⁹

Although no case before an international court or tribunal has unequivocally affirmed the existence of acquisitive prescription as a mode of acquiring title to territory,¹³⁰ and although Judge Moreno Quintana in his dissenting opinion in the *Rights of Passage* case¹³¹ found no place for the concept in international law, there is considerable evidence that points in that direction. For example, the continuous and peaceful display of sovereignty, or some variant thereof, was emphasized as the basis for title in the *Minquiers and Ecrehos Case* (France v. United Kingdom),¹³² the *Anglo-Norwegian Fisheries Case* (United Kingdom v. Norway)¹³³ and in the *Island of Palmas Arbitration* (United States v. Netherlands).¹³⁴

- 9.2. If a claim to acquisitive prescription is to be maintained in relation to the Hawaiian Islands, various *indicia* have to be considered including, for example, the length of time of effective and peaceful occupation, the extent of opposition to or acquiescence in that occupation, and, perhaps, the degree of recognition provided by third states. However, “no general rule [can] be laid down as regards the length of time and other circumstances which are necessary to create such a title by prescription. Everything [depends] upon

¹²⁸ See HALL, *supra* note 109, at 143.

¹²⁹ D.H.N. Johnson, *Acquisitive Prescription in International Law*, 27 BRIT. Y. B. INT’L L. 332, 353 (1950).

¹³⁰ Prescription may be said to have been recognized in the *Chamizal Arbitration*, 5 AM. J. INT’L L. 782 (1911) 785; the *Grisbadana Arbitration* P.C.I.J. 1909; and the *Island of Palmas Arbitration*, *supra* note 92.

¹³¹ I.C.J. Rep. 1960, at 6.

¹³² I.C.J. Rep. 1953, at 47

¹³³ I.C.J. Rep. 1951, at 116.

¹³⁴ See *Palmas case*, *supra* note 92.

the merits of the individual case.”¹³⁵ As regards the temporal element, the United States could claim to have peacefully and continuously exercised governmental authority in relation to Hawai‘i for over a century. This is somewhat more than was required for purposes of prescription in the *British Guiana-Venezuela Boundary Arbitration*, for example,¹³⁶ but it is clear that time alone is certainly not determinative. Similarly, in terms of the attitude of third states, it is evident that apart from the initial protest of the Japanese Government in 1897, none has opposed the extension of United States jurisdiction to the Hawaiian Islands. Indeed the majority of states may be said to have acquiesced in its claim to sovereignty in virtue of acceding to its exercise of sovereign prerogatives in respect of the Islands, but this acquiescence by other states was based on misleading and false information that was presented to the United Nations by the United States as before mentioned. It could be surmised, as well, that the United States misled other states regarding Hawai‘i even prior to the establishment of the United Nations in 1945. It is important, however, not to attach too much emphasis to third party recognition. As Jennings points out, in case of adverse possession “[r]ecognition or acquiescence on the part of third States... must strictly be irrelevant.”¹³⁷

- 9.3. More difficult, in this regard, is the issue of acquiescence or protest as between the Hawaiian Kingdom and the United States. In the *Chamizal Arbitration* it was held that the United States could not maintain a claim to the Chamizal tract by way of prescription in part because of the protests of the Mexican government.¹³⁸ The Mexican government, in the view of the Commission, had done “all that could be reasonably required of it by way of protest against the illegal encroachment.”¹³⁹ Although it had not attempted to retrieve the land by force, the Commission pointed out that:

“however much the Mexicans may have desired to take physical possession of the district, the result of any attempt to do so would have provoked scenes of violence and the Republic of Mexico can not be blamed for resorting to the milder forms of protest contained in its diplomatic correspondence.”¹⁴⁰

In other words, protesting in any way that might be “reasonably required” should effectively defeat a claim of acquisitive prescription.

- 9.4. Ultimately, a “claim” to prescription is not equal to a “title” by prescription, especially in light of the presumption of title being vested in the State the

¹³⁵ See OPPENHEIM, *supra* note 96, at 706.

¹³⁶ The arbitrators were instructed by their treaty terms of reference to allow title if based upon “adverse holding or prescription during a period of fifty years.” 28 R.I.A.A (1899) 335.

¹³⁷ See OPPENHEIM, *supra* note 96, at 39.

¹³⁸ *The Chamizal Arbitration Between the United States and Mexico*, 5 AM. J. INT’L L. 782 (1911).

¹³⁹ *Id.*, at 807.

¹⁴⁰ *Id.*

claim is made against. Johnson acknowledges this distinction when he states that the “length of time required for the establishment of a prescriptive title on the one hand, and the extent of the action required to prevent the establishment of a prescriptive title on the other hand, are invariably matters of fact to be decided by the international tribunal before which the matter is eventually brought for adjudication.”¹⁴¹ The United States has made no claim to acquisitive prescription before any international body, but, instead, has reported to the United Nations in 1952 the fraudulent claim that the “Hawaiian Islands, by virtue of the Joint Resolution of Annexation and the Hawaiian Organic Act, became an integral part of the United States and were given a territorial form of government which, in the United States political system, precedes statehood.”¹⁴²

- 9.5. When President Cleveland accepted, by *exchange of notes*, the police power from the Queen under threat of war, and by virtue of that assignment initiated a presidential investigation that concluded the Queen, as Head of State and Head of Government, was both the *de facto* and *de jure* government of the Hawaiian Islands, and subsequently entered into a second executive agreement to restore the government on condition that the Queen or her successor in office would grant amnesty to the insurgents, the United States admitted that title or sovereignty over the Hawaiian Islands remained vested in the Hawaiian Kingdom and no other. Thus, it is impossible for the United States to claim to have acquired title to the Hawaiian Islands in 1898 from the government of the so-called Republic of Hawai‘i, because the Republic of Hawai‘i, by the United States’ own admission, was “self-declared.”¹⁴³ Furthermore, by the terms of the 1893 executive agreements—the *Lili‘uokalani assignment* and the *Agreement of restoration*, the United States recognized the continuing sovereignty of the Hawaiian Kingdom over the Hawaiian Islands despite its government having yet to be restored under the agreement. Therefore, the presumption may also be based on the general principle of international law, *pacta sunt servanda*, whereby an agreement in force is binding upon the parties and must be performed by them in good faith.

C. TREATY BETWEEN THE HAWAIIAN KINGDOM AND NEW ZEALAND

- 9.6. The first friendship treaty the Hawaiian Kingdom entered into as a sovereign state was with Denmark on October 19, 1846. Other friendship treaties followed with Hamburg, succeeded by Germany, (January 8, 1848), the United States of America (December 20, 1849), the United Kingdom (July 10,

¹⁴¹ See Johnson, *supra* note 126, at 354.

¹⁴² See *Communication from the United States of America*, *supra* note 74.

¹⁴³ *Joint Resolution To acknowledge the 100th anniversary of the January 17, 1893 overthrow of the Kingdom of Hawaii, and to offer an apology to Native Hawaiians on behalf of the United States for the overthrow of the Kingdom of Hawai‘i* (Apology Resolution), 103d Cong., 107 U.S. Stat. 1510 (1993), reprinted in 1 HAW. J. L. & POL. 290 (Summer 2004). The resolution stated, in part, “Whereas, through the Newlands Resolution, the self-declared Republic of Hawaii ceded sovereignty over the Hawaiian Islands to the United States.”

1851), Bremen, succeeded by Germany, (March 27, 1854), Sweden-Norway, now separate states, (April 5, 1855), France (September 8, 1858), Belgium (October 4, 1862), Netherlands (October 16, 1862), Luxembourg (October 16, 1862), Italy (July 22, 1863), Spain (October 9, 1863), Switzerland (July 20, 1864), Russia (June 19, 1869), Japan (August 19, 1871), Austria-Hungary, now separate states (June 18, 1875), Germany (March 25, 1879), and Portugal (May 5, 1882). Neither the Hawaiian Kingdom nor any of these states expressed any intention to terminate any of the treaties according to the provisions provided in each of the treaties, and therefore remain in full force and effect.

- 9.7. These treaties have the “most favored nation” clause, and secure the equal application of commercial trade in the Hawaiian Islands to all treaty partners. These treaties have all been violated by the United States through the unlawful imposition of the *Merchant Marine Act* (1920)—also known as the *Jones Act*—that has secured commercial control over the seas to United States citizens, which has consequently placed the citizens of these foreign states at a commercial disadvantage.¹⁴⁴ The clause is designed

“to establish the principle of equality of international treatment. The test of whether the principle is violated by the concession of advantages to a particular nation is not the form in which such concession is made, but the condition on which it is granted; whether it is given for a price, or whether this price is in the nature of a substantial equivalent, and not a mere evasion.”¹⁴⁵

- 9.8. Treaties “are legally binding, because there exists a customary rule of International Law that treaties are binding. The binding effect of that rule rests in the last resort on the fundamental assumption, which is neither consensual nor necessarily legal, of the objectively binding force of International Law,”¹⁴⁶ states Oppenheim. “No distinction should be made between more or less important parts of a treaty as regards its execution. Whatever may be the importance or the insignificance of a part of a treaty, it must be executed in good faith, for the binding force of a treaty covers all its parts and stipulations equally.”¹⁴⁷
- 9.9. As a member of the Commonwealth Realm, New Zealand is a party to the 1851 Hawaiian-British Treaty. The treaty has no provisions for termination other than for the termination of Articles 4, 5 and 6 that provide duties on imports. However, a treaty “concluded between two States become void through the extinction of one of the contracting parties.”¹⁴⁸ According to Hyde, “When a state relinquishes its life as such through incorporation into, or

¹⁴⁴ 46 U.S.C. §883-1.

¹⁴⁵ BLACK’S LAW DICTIONARY 1013 (6th ed. 1990).

¹⁴⁶ See OPPENHEIM, at 794.

¹⁴⁷ *Id.*, 829.

¹⁴⁸ See OPPENHEIM, at 851.

absorption by, another state, the treaties of the former are believed to be automatically terminated.”¹⁴⁹ Therefore, since the presumption of state continuity is maintained under international law despite the absence of an effective government, the Hawaiian Kingdom remains a state and a treaty partner under the 1851 Hawaiian-British Treaty. Article VIII provides:

“subjects of either of the contracting parties in the territories of the other, shall receive and enjoy full and perfect protection for their persons and property, and shall, have free and open access to the courts of justice in the said countries, respectively, for the prosecution and defense of their just rights; and they shall be at liberty to employ, in all causes, the advocates, attorneys or agents of whatever description, whom they may think proper; and they shall enjoy in this respect the same rights and privileges as native subjects.”

D. WAR CRIMES

10. *INTERNATIONAL ARMED CONFLICT*

10.1. Before war crimes can be alleged to have been committed there must be a state of war *sensu stricto*—an international armed conflict between states. Clapham, director of the Geneva Academy of International Humanitarian Law and Human Rights and professor in international law at the Graduate Institute, however, states, “The classification of an armed conflict under international law is an objective legal test and not a decision left to national governments or any international body, not even the UN Security Council.”¹⁵⁰ As an international armed conflict is a question of fact, these facts must be objectively tested by the principles of international humanitarian law as provided in the 1907 Hague Conventions, the 1949 Geneva Conventions and its 1977 Additional Protocols.

10.2. Since the 1949 Geneva Conventions, the expression “armed conflict” substituted the term “war” in order for the Conventions to apply “to all cases of partial or total occupation of the territory of a High Contracting Party, even if the said occupation meets with no armed resistance (Common Article 2).” According to the International Committee of the Red Cross (ICRC) Commentary of the GC IV, this wording of Article 2 “was based on the experience of the Second World War, which saw territories occupied without hostilities, the Government of the occupied country considering that armed resistance was useless. In such cases the interests of protected persons are, of course, just as deserving of protection as when the occupation is carried out by

¹⁴⁹ Charles Cheney Hyde, *The Termination of the Treaties of a State in Consequence of its Absorption by Another—The Position of the United States*, 26 AM. J. INT’L L. 133 (1932).

¹⁵⁰ Ellen Wallace, “War Report”: global report calls for caution with armed conflict label, ELLEN’S SWISS NEWS WORLD (Dec. 10, 2013) at <http://genevalunch.com/2013/12/10/war-report-global-report-calls-caution-armed-conflict-label/>.

force.”¹⁵¹ According to Casey-Maslen, an international armed conflict exists “whenever one state uses any form of armed force against another, irrespective of whether the latter state fights back,” which “includes the situation in which one state invades another and occupies it, even if there is no armed resistance.”¹⁵² The ICRC Commentary further clarifies that “Any difference arising between two [s]tates and leading to the intervention of members of the armed forces is an armed conflict within the meaning of Article 2, even if one of the Parties denies the existence of a state of war. It makes no difference how long the conflict lasts, or how much slaughter takes place. The respect due to the human person as such is not measured by the number of victims.”¹⁵³

- 10.3. Although the Conventions apply to Contracting state Parties, it is universally understood that the Conventions reflect customary international law that bind all states. On this subject, the Commentary clarifies that “any Contracting Power in conflict with a non-Contracting Power will begin by complying with the provisions of the Convention pending the adverse Party’s declaration.”¹⁵⁴ Even if a state should denounce the Fourth Convention according to Article 158, the denouncing state “would nevertheless remain bound by the principles contained in [the Convention] in so far as they are the expression of the imprescriptible and universal rules of customary international law.”¹⁵⁵
- 10.4. “According to the Rules of Land Warfare of the United States Army,” Hyde explains, “belligerent or so-called military occupation is a question of fact. It presupposes a hostile invasion as a result of which the invader has rendered the invaded Government incapable of publicly exercising its authority, and that the invader is in a position to substitute and has substituted his own authority for that of the legitimate government of the territory invaded.”¹⁵⁶ The armed conflict arose out of the United States’ belligerent occupation of Hawaiian territory in order to wage war against the Spanish in the Pacific without the consent from the lawful authorities of the Hawaiian Kingdom. Since the end of the Spanish-American War by the 1898 Treaty of Paris, the Hawaiian Kingdom has remained belligerently occupied and its territory was used as a base of military operations during World War I and II, the Korean War, the Vietnam War, the Gulf War, the Iraqi War, the United States war on terrorism, and currently the state of war declared by the Democratic People’s Republic of Korea (DPRK) against the United States and the Republic of Korea on March 30, 2013.¹⁵⁷

¹⁵¹ JEAN S. PICTET, COMMENTARY ON THE IV GENEVA CONVENTION, RELATIVE TO THE PROTECTION OF CIVILIAN PERSONS IN TIME OF WAR, 21 (1958).

¹⁵² STUART CASEY-MASLEN, WAR REPORT 2012 (2013), at 7.

¹⁵³ See PICTET, *supra* note 142, at 20.

¹⁵⁴ *Id.*, at 24.

¹⁵⁵ *Id.*, at 625.

¹⁵⁶ CHARLES CHENEY HYDE, LAND WARFARE, 8 (1918).

¹⁵⁷ See “North-South Relations Have Been Put at State of War: Special Statement of DPRK,” *Korean Central News Agency of DPRK*, posted on March 30, 2013, <http://www.kcna.co.jp/index-e.htm>.

- 10.5. According to Oppenheim, a “declaration of war is a communication by one [s]tate to another that the condition of peace between them has come to an end, and a condition of war has taken its place;”¹⁵⁸ and war is “considered to have commenced from the date of its declaration, although actual hostilities may not have been commenced until much later.”¹⁵⁹ While customary international law does not require a formal declaration of war to be made before international law recognizes a state of war, it does, however, provide notice to not only the opposing state of the intent of the declarant state, but also to all neutral states that a state of war has been established.
- 10.6. The Hawaiian Kingdom has again been drawn into another state of war as evidenced in DPRK’s March 30, 2013 declaration of war, which stated, “It is self-evident that any military conflict on the Korean Peninsula is bound to lead to an all-out war, a nuclear war now that even U.S. nuclear strategic bombers in its military bases in the Pacific including Hawaii and Guam and in its mainland are flying into the sky above south Korea to participate in the madcap DPRK-targeted nuclear war moves.” The day before the declaration of war, DPRK’s Korean Central News Agency reported, Supreme Commander of the Korean People’s Army Marshal Kim Jong Un “signed the plan on technical preparations of strategic rockets of the KPA, ordering them to be standby for fire so that they may strike any time the U.S. mainland, its military bases in the operational theaters in the Pacific, including Hawaii and Guam, and those in south Korea.”¹⁶⁰ In response to the declaration of war, the BBC reported, “The US Department of Defense said on Wednesday it would deploy the ballistic Terminal High Altitude Area Defense System (Thaad) to Guam in the coming weeks.”¹⁶¹
- 10.7. In light of the DPRK’s declaration of war, the Hawaiian Kingdom is situated in a region of war that places its civilian population, to include New Zealand expatriates, in perilous danger similar to Japan’s attack of U.S. military forces situated in the Hawaiian Islands of December 7, 1941. According to Oppenheim, “The region of war is that part of the surface of the earth in which the belligerents may prepare and execute hostilities against each other.”¹⁶² While neutral states do not fall within the region of war, there are exceptional cases, such as when a belligerent invades a neutral state, *i.e.* Luxembourg by Germany during World War I. The United States invasion of the Hawaiian Kingdom occurred during the Spanish-American War and has since been prolonged.

¹⁵⁸ LASSA OPPENHEIM, INTERNATIONAL LAW, VOL. II, 293 (7th ed. 1952).

¹⁵⁹ *Id.*, 295.

¹⁶⁰ See “Kim Jong Un Convenes Operation Meeting, Finally Examines and Ratifies Plan for Firepower Strike,” *Korean Central News Agency of DPRK*, posted on March 29, 2013, <http://www.kcna.co.jp/index-e.htm>.

¹⁶¹ See “North Korea threatens: US to move missile defenses to Guam,” *BBC News Asia*, posted on April 4, 2013, <http://www.bbc.com/news/world-us-canada-22021832>.

¹⁶² See OPPENHEIM, VOL. II, *supra* note 149, at 237.

10.8. Furthermore, should the DPRK invade and occupy a portion or the entire territory of the Hawaiian Kingdom during the state of war it would nevertheless be bound by the GC IV as is the United States. The DPRK, United States and the Hawaiian Kingdom, are High Contracting Parties to the GC IV. The DPRK ratified the Convention on August 27, 1957; the United States ratified the Convention on August 2, 1955; and the Hawaiian Kingdom acceded to the Convention on November 28, 2012, which was acknowledged and received by Ambassador Benno Bättig, General Secretariat of the Swiss Federal Department of Foreign Affairs, on January 14, 2013, at the city of Bern, Switzerland.¹⁶³

11. *WAR CRIMES COMMITTED IN AN OCCUPIED NEUTRAL STATE*

11.1. Under United States federal law, a *war crime* is a felony and defined as any conduct “defined as a grave breach in any of the international conventions signed at Geneva 12 August 1949,” and conduct “prohibited by Article 23, 25, 27, or 28 of the Annex to the Hague Convention IV, Respecting the Laws and Customs of War on Land, signed 18 October 1907.”¹⁶⁴ United States Army Field Manual 27-10 expands the definition of a war crime, which is applied in armed conflicts that involve United States troops, to be “the technical expression for a violation of the law of war by any person or persons, military or civilian. Every violation of the law of war is a war crime.”¹⁶⁵

12. *WAR CRIMES: 1907 HAGUE CONVENTION, IV*

Article 43—The authority of the legitimate power having in fact passed into the hands of the occupant, the latter shall take all the measures in his power to restore, and ensure, as far as possible, public order and safety, while respecting, unless absolutely prevented, the laws in force in the country.

12.1. When the United States began the occupation at 12 noon on August 12, 1898, it deliberately failed to administer the laws of the Hawaiian Kingdom as it stood prior to the unlawful overthrow of the Hawaiian Kingdom government by the United States on January 17, 1893. Instead, the United States unlawfully maintained the continued presence and administration of law of the self-declared Republic of Hawai‘i that was a puppet regime established through United States intervention on January 17, 1893. The puppet regime was originally called the provisional government, which was later changed to

¹⁶³ The instrument of accession and acknowledgment of receipt can be accessed online at: http://hawaiiankingdom.org/pdf/GC_Accession.pdf. The *acting* government represented the Hawaiian Kingdom in arbitral proceedings, *Larsen v. Hawaiian Kingdom*, before the Permanent Court of Arbitration, The Hague, Netherlands, 119 INT’L L. REP. 566, 581 (2001), *reprinted in* 1 HAW. J. L. & POL. 299 (Summer 2004).

¹⁶⁴ Title 18 U.S.C. §2441.

¹⁶⁵ U.S. Army Field Manual 27-10, section 499 (July 1956).

the Republic of Hawai‘i on July 4, 1894. The provisional government was neither a government *de facto* nor *de jure*, but self-proclaimed as concluded by President Cleveland in his message to the Congress on December 18, 1893, and the Republic of Hawai‘i was acknowledged as *self-declared* by the Congress in a joint resolution apologizing on the one hundredth anniversary of the illegal overthrow of the Hawaiian Kingdom government on November 23, 1993. Both the provisional government and the Republic of Hawai‘i were Armed Forces of the United States born out of intervention. They were not governments either *de jure* or *de facto*.

12.2. Since April 30, 1900, the United States imposed its national laws over the territory of the Hawaiian Kingdom in violation of international law and the laws of occupation. By virtue of congressional legislation, the so-called Republic of Hawai‘i was subsumed. Through *An Act to provide a government for the Territory of Hawai‘i*, “the phrase ‘laws of Hawaii,’ as used in this Act without qualifying words, shall mean the constitution and laws of the Republic of Hawaii in force on the twelfth day of August, eighteen hundred and ninety-eight.”¹⁶⁶

12.3. When the Territory of Hawai‘i was succeeded by the State of Hawai‘i on March 18, 1959 through United States legislation, the Congressional Act provided that all “laws in force in the Territory of Hawaii at the time of admission into the Union shall continue in force in the State of Hawaii, except as modified or changed by this Act or by the constitution of the State, and shall be subject to repeal or amendment by the Legislature of the State of Hawaii.”¹⁶⁷ Furthermore:

“the term ‘Territorial law’ includes (in addition to laws enacted by the Territorial Legislature of Hawaii) all laws or parts thereof enacted by the Congress the validity of which is dependent solely upon the authority of the Congress to provide for the government of Hawaii prior to its admission into the Union, and the term ‘laws of the United States’ includes all laws or parts thereof enacted by the Congress that (1) apply to or within Hawaii at the time of its admission into the Union, (2) are not ‘Territorial laws’ as defined in this paragraph, and (3) are not in conflict with any other provision of this Act.”¹⁶⁸

12.4. The laws and customs of war during occupation applies only to territories that come under the authority of either the occupier’s military or an occupier’s Armed Force, such as the State of Hawai‘i, and that the “occupation extends only to the territory where such authority has been established and can be exercised.”¹⁶⁹ According to Ferraro, “occupation—as a species of international

¹⁶⁶ 31 U.S. Stat. 141 (1896-1901).

¹⁶⁷ 73 U.S. Stat. 11 (1959).

¹⁶⁸ *Id.*

¹⁶⁹ 1907 Hague Convention, IV, Article 42.

armed conflict—must be determined solely on the basis of the prevailing facts.”¹⁷⁰ Although unlawful, it is a fact that the United States created the State of Hawai‘i through congressional action and signed into law by its President, Dwight D. Eisenhower, in 1959. It is also a fact that the United States approved the constitution of the State of Hawai‘i that provides for its organizational structure.

- 12.5. As an Armed Force, the State of Hawai‘i established its authority over 137 islands,¹⁷¹ “together with their appurtenant reefs and territorial and archipelagic waters.”¹⁷² These islands include the major islands of Hawai‘i, Maui, O‘ahu, Kaua‘i, Molokai, Lana‘i, Ni‘ihau, and Kaho‘olawe. It is the effectiveness of the control exercised by the State of Hawai‘i over this territory, as an Armed Force for the United States, which triggers the application of occupation law.

Allegiance to the United States—The State of Hawai‘i, as an Armed Force, bears its allegiance to the United States where its public officers, to include its Governor, take the following oath of office: “I do solemnly swear (or affirm) that I will support and defend the Constitution of the United States, and the Constitution of the State of Hawaii, and that I will faithfully discharge my duties as [...] to best of my ability.”¹⁷³

Commanded by a Person Responsible for His Subordinates—A Governor who is elected by U.S. citizens in Hawai‘i is head of the State of Hawai‘i. The Governor is responsible for the execution of its laws from its legislature and to carry out the decisions by its courts. The Governor is also the “commander in chief of the armed forces of the State and may call out such forces to execute the laws, suppress or prevent insurrection or lawless violence or repel invasion.”¹⁷⁴ The Governor’s subordinates include all “executive and administrative offices, departments and instrumentalities of the state government.”¹⁷⁵

Fixed Distinctive Emblem Recognizable at a Distance—According to its constitution, “The Hawaiian flag shall be the flag of the State.”¹⁷⁶

Carry Arms Openly—Law enforcement officers of the State of Hawai‘i, to include the Sheriff’s Division, Department of Land and Natural Resources, and the police of the State’s four Counties, all

¹⁷⁰ TRISTAN FERRARO, *Determining the beginning and end of an occupation under international humanitarian law*, 94 (no. 885) INT’L REV RED CROSS 133, 134 (Spring 2012).

¹⁷¹ “Hawai‘i Facts and Figures” (December 2014), State of Hawai‘i Department of Business, Economic Development & Tourism.

¹⁷² State of Hawai‘i Constitution, Article XV, section 1, available at <http://lrbhawaii.org/con/>.

¹⁷³ *Id.*, Article XVI, sec. 4.

¹⁷⁴ *Id.*, Article V, sec. 5.

¹⁷⁵ *Id.*, sec. 6.

¹⁷⁶ *Id.*, Article XV, sec. 3.

openly carry arms. Also included are the State of Hawai‘i’s Army National Guard and Air National Guard who openly carry arms while in tactical training.

Conduct Operations in Accordance with the Laws and Customs of War—As the Governor is the commander in chief of the State’s Armed Forces, and is responsible for the suppression or prevention of insurrection or lawless violence, as well as repelling an invasion, the State of Hawai‘i is capable of conducting operations in accordance with the laws and customs of war during occupation. The State of Hawai‘i’s Army and Air National Guard are trained in the laws and customs of war.

- 12.6. Article 43 does not transfer sovereignty to the occupying power.¹⁷⁷ Section 358, United States Army Field Manual 27-10, declares, “Being an incident of war, military occupation confers upon the invading force the means of exercising control for the period of occupation. It does not transfer the sovereignty to the occupant, but simply the authority or power to exercise some of the rights of sovereignty.” Sassòli further elaborates, “The occupant may therefore not extend its own legislation over the occupied territory nor act as a sovereign legislator. It must, as a matter of principle, respect the laws in force in the occupied territory at the beginning of the occupation.”¹⁷⁸
- 12.7. The United States’ failure to comply with the 1893 executive agreements to reinstate the Queen and her cabinet, and its failure to comply with the law of occupation to administer Hawaiian Kingdom law as it stood prior to the unlawful overthrow of the Hawaiian government on January 17, 1893, when it occupied the Hawaiian Islands during the 1898 Spanish-American War, renders all administrative and legislative acts of the provisional government, the Republic of Hawai‘i, the Territory of Hawai‘i and currently the State of Hawai‘i are all illegal and void because these acts stem from governments that are neither *de facto* nor *de jure*, but self-declared. As the United States is a government that is both *de facto* and *de jure*, its legislation, however, has no extraterritorial effect except under the principles of active and passive personality jurisdiction. In particular, this has rendered all conveyances of real property and mortgages to be defective since January 17, 1893, because of the absence of a competent notary public under Hawaiian Kingdom law. Since January 17, 1893, all notaries public stem from a self-declared government.

¹⁷⁷ See EYAL BENVENISTI, *THE INTERNATIONAL LAW OF OCCUPATION* 8 (1993); GERHARD VON GLAHN, *THE OCCUPATION OF ENEMY TERRITORY — A COMMENTARY ON THE LAW AND PRACTICE OF BELLIGERENT OCCUPATION* 95 (1957); Michael Bothe, *Occupation, Belligerent*, in Rudolf Bernhardt (dir.), *ENCYCLOPEDIA OF PUBLIC INTERNATIONAL LAW*, vol. 3, 765 (1997).

¹⁷⁸ Marco Sassòli, *Article 43 of the Hague Regulations and Peace Operations in the Twenty-first Century*, *INTERNATIONAL HUMANITARIAN LAW RESEARCH INITIATIVE* 5 (2004), available at: <http://www.hpcrresearch.org/sites/default/files/publications/sassoli.pdf>.

Article 45—It is forbidden to compel the inhabitants of occupied territory to swear allegiance to the [Occupying] Power.

- 12.8. When the provisional government was established through the support and protection of U.S. troops on January 17, 1893, it proclaimed that it would provisionally “exist until terms of union with the United States of America have been negotiated and agreed upon.” The provisional government was not a new government, but rather a small group of insurgents that usurped and seized the executive office of the Hawaiian Kingdom. With the backing of U.S. troops it further proclaimed, “All officers under the existing Government are hereby requested to continue to exercise their functions and perform the duties of their respective offices, with the exception of the following named persons: Queen Liliuokalani, Charles B. Wilson, Marshal, Samuel Parker, Minister of Foreign Affairs, W.H. Cornwell, Minister of Finance, John F. Colburn, Minister of the Interior, Arthur P. Peterson, Attorney-General, who are hereby removed from office.” All government officials were coerced and forced to sign oaths of allegiance, “I...do solemnly swear in the presence of Almighty God, that I will support the Provisional Government of the Hawaiian Islands, promulgated and proclaimed on the 17th day of January, 1893. Not hereby renouncing, but expressly reserving all allegiance to any foreign country now owing by me.”
- 12.9. The compelling of inhabitants serving in the Hawaiian Kingdom government to swear allegiance to the occupying power, through its puppet regime, the provisional government, began on January 17, 1893 with oversight by United States troops until April 1, 1893, when they were ordered to depart Hawaiian territory by U.S. Special Commissioner, James Blount, who began the presidential investigation into the overthrow. When Special Commissioner Blount arrived in the Hawaiian Kingdom on March 29, 1893, he reported to U.S. Secretary of State Walter Gresham, “The troops from the *Boston* were doing military duty for the Provisional Government. The American flag was floating over the government building. Within it the Provisional Government conducted its business under an American protectorate, to be continued, according to the avowed purpose of the American minister, during negotiations with the United States for annexation.”
- 12.10. Due to the deliberate failure of the United States to carry out the 1893 *executive agreements* to reinstate the Queen and her cabinet of officers, the insurgents were allowed to maintain their unlawful control as an Armed Force with the employment of American mercenaries. The provisional government was renamed the Republic of Hawai‘i on July 4, 1894. The United States has directly compelled the inhabitants of the Hawaiian Kingdom to swear allegiance to the United States when serving in the so-called Territory of Hawai‘i and State of Hawai‘i Armed Forces in direct violation of Article 45 of the HC IV. Section 19 of the Territorial Act provides, “That every member of the legislature, and all officers of the government of the Territory of Hawaii,

shall take the following oath: I do solemnly swear (or affirm), in the presence of Almighty God, that I will faithfully support the Constitution and laws of the United States, and conscientiously and impartially discharge my duties as a member of the legislature, or as an officer of the government of the Territory of Hawaii.”¹⁷⁹ Section 4, Article XVI of the State of Hawai‘i constitution provides, “All eligible public officers, before entering upon the duties of their respective offices, shall take and subscribe to the following oath or affirmation: ‘I do solemnly swear (or affirm) that I will support and defend the Constitution of the United States, and the Constitution of the State of Hawaii, and that I will faithfully discharge my duties as ... to best of my ability.’”

Article 46—Family honour and rights, the lives of persons, and private property, as well as religious convictions and practice, must be respected. Private property cannot be confiscated.

- 12.11. Beginning on 20 July 1899, President McKinley began to set aside portions of lands by executive orders for “installation of shore batteries and the construction of forts and barracks.”¹⁸⁰ The first executive order set aside 15,000 acres for two Army military posts on the Island of O‘ahu called Schofield Barracks and Fort Shafter. This soon followed the securing of lands for Pearl Harbor naval base in 1901 when the U.S. Congress appropriated funds for condemnation of seven hundred nineteen (719) acres of private lands surrounding Pearl River, which later came to be known as Pearl Harbor.¹⁸¹ By 2012, the U.S. military has one hundred eighteen (118) military sites that span 230,929 acres of the Hawaiian Islands, which is 20% of the total acreage of Hawaiian territory.¹⁸²

Article 47—Pillage is formally forbidden.

- 12.12. Since January 17, 1893, there has been no lawful government exercising its authority in the Hawaiian Islands, *e.g.* provisional government (1893-1894), Republic of Hawai‘i (1894-1900), Territory of Hawai‘i (1900-1959) and the State of Hawai‘i (1959-present). As these entities were neither governments *de facto* nor *de jure*, but self-proclaimed, and their collection of tax revenues and non-tax revenues, *e.g.* rent and purchases derived from real estate, were not for the benefit of a *bona fide* government in the exercise of its police power, it can only be considered as benefitting private individuals who are employed by the State of Hawai‘i.

¹⁷⁹ 31 U.S. Stat. 145 (1896-1901).

¹⁸⁰ See Robert H. Horwitz, Judith B. Finn, Louis A. Vargha, and James W. Ceaser, *Public Land Policy in Hawai‘i: An Historical Analysis*, 20 (State of Hawai‘i Legislative Reference Bureau Report No. 5, 1969).

¹⁸¹ See John D. VanBrackle, “Pearl Harbor from the First Mention of ‘Pearl Lochs’ to Its Present Day Usage,” 21-26 (undated manuscript on file in Hawaiian-Pacific Collection, Hamilton Library, University of Hawai‘i at Manoa).

¹⁸² See U.S. Department of Defense’s Base Structure Report (2012), available at: <http://www.acq.osd.mil/ie/download/bsr/BSR2012Baseline.pdf>.

12.13. Pillage or plunder is “the forcible taking of private property by an invading or conquering army,”¹⁸³ which, according to the Elements of Crimes of the International Criminal Court, must be seized “for private or personal use.”¹⁸⁴ As such, the prohibition of pillaging or plundering is a specific application of the general principle of law prohibiting theft.¹⁸⁵ The residents of the Hawaiian Islands have been the subject of pillaging and plundering since the establishment of the provisional government by the United States on January 17, 1893, and continue to date by its successor, the State of Hawai‘i.

Article 48—If, in the territory occupied, the occupant collects the taxes, dues, and tolls imposed for the benefit of the [s]tate, he shall do so, as far as is possible, in accordance with the rules of assessment and incidence in force, and shall in consequence be bound to defray the expenses of the administration of the occupied territory to the same extent as the legitimate Government was so bound.

12.14. Unlike the State of Hawai‘i that claims to be a public entity, but in reality is private, the United States government is a public entity and not private, but its exercising of authority in the Hawaiian Islands in violation of international laws is unlawful. Therefore, the United States cannot be construed to have committed the act of pillaging since it is public, but has appropriated private property through unlawful contributions, *e.g.* federal taxation, which is regulated by Article 48. And Article 49 provides, “If, in addition to the taxes mentioned in the above article, the occupant levies other money contributions in the occupied territory, this shall only be for the needs of the army or of the administration of the territory in question.” The United States collection of federal taxes from the residents of the Hawaiian Islands is an unlawful contribution that is exacted for the sole purpose of supporting the United States federal government and not for “the needs of the army or of the administration of the territory.” See also paragraphs 13.1 – 13.4 below.

Article 55—The occupying [s]tate shall be regarded only as administrator and usufructuary of public buildings, real estate, forests, and agricultural estates belonging to the [occupied] [s]tate, and situated in the occupied territory. It must safeguard the capital of these properties, and administer them in accordance with the rules of usufruct.

12.15. With the backing of United States troops, the provisional government unlawfully seized control of all government property, both real and personal. In 1894, the provisional government’s successor, the so-called Republic of Hawai‘i, seized the private property of Her Majesty Queen Lili‘uokalani, which was called Crown lands, and called it public lands. According to

¹⁸³ See BLACK’S LAW, *supra* note 89, at 1148.

¹⁸⁴ Elements of Crimes, International Criminal Court, Pillage as a war crime (ICC Statute, Article 8(2)(b)(xvi) and (e)(v)).

¹⁸⁵ JEAN-MARIE HENCKAERTS AND LOUISE DOSWALD-BECK, INTERNATIONAL COMMITTEE OF THE RED CROSS—CUSTOMARY INTERNATIONAL HUMANITARIAN LAW, VOL. 1, RULES 185 (2009).

Hawaiian Kingdom law, the Crown lands were distinct from the public lands of the Hawaiian government since 1848, which comprised roughly 1 million acres, and the government lands comprised roughly 1.5 million acres. The total acreage of the Hawaiian Islands comprised 4 million acres.

- 12.16. In a case before the Hawaiian Kingdom Supreme Court in 1864 that centered on Crown lands, the court stated:

“In our opinion, while it was clearly the intention of Kamehameha III to protect the lands which he reserved to himself out of the domain which had been acquired by his family through the prowess and skill of his father, the conqueror, from the danger of being treated as public domain or Government property, it was also his intention to provide that those lands should descend to his heirs and successors, the future wearers of the crown which the conqueror had won; and we understand the act of 7th June, 1848, as having secured both those objects. Under that act the lands descend in fee, the inheritance being limited however to the successors to the throne, and each successive possessor may regulate and dispose of the same according to his will and pleasure, as private property, in like manner as was done by Kamehameha III.”¹⁸⁶

- 12.17. In 1898, the United States seized control of all these lands and other property of the Hawaiian Kingdom government as evidenced by the joint resolution of annexation. The resolution stated, that the United States has acquired “the absolute fee and ownership of all public, Government, or Crown lands, public buildings or edifices, ports, harbors, military equipment, and all other public property of every kind and description belonging to the Government of the Hawaiian Islands, together with every right and appurtenance thereunto appertaining.”¹⁸⁷

Article 56—The property of municipalities, that of institutions dedicated to religion, charity and education, the arts and sciences, even when [s]tate property, shall be treated as private property. All seizure of, destruction or willful damage done to institutions of this character, historic monuments, works of art and science, is forbidden, and should be made the subject of legal proceedings.

- 12.18. In 1900, President McKinley signed into United States law *An Act To provide a government for the Territory of Hawai‘i*,¹⁸⁸ and shortly thereafter, intentionally sought to “Americanize” the inhabitants of the Hawaiian Kingdom politically, culturally, socially, and economically. To accomplish this, a plan was instituted in 1906 by the Territorial government, titled “Programme for Patriotic Exercises in the Public Schools, Adopted by the

¹⁸⁶ See *Estate of His Majesty Kamehameha IV*, 3 Haw. 715, 725 (1864).

¹⁸⁷ 30 U.S. Stat. 750 (1896-1898).

¹⁸⁸ 31 U.S. Stat. 141 (1896-1901).

Department of Public Instruction,” which I’m attaching as Appendix “V.” *Harper’s Weekly*, attached as Appendix “VI,” reported:

“At the suggestion of Mr. Babbitt, the principal, Mrs. Fraser, gave an order, and within ten seconds all of the 614 pupils of the school began to march out upon the great green lawn which surrounds the building. ...Out upon the lawn marched the children, two by two, just as precise and orderly as you find them at home. With the ease that comes of long practice the classes marched and counter-marched until all were drawn up in a compact array facing a large American flag that was dancing in the northeast trade-wind forty feet about their heads. ...‘Attention!’ Mrs. Fraser commanded. The little regiment stood fast, arms at side, shoulders back, chests out, heads up, and every eye fixed upon the red, white and blue emblem that waived protectingly over them. ‘Salute!’ was the principal’s next command. Every right hand was raised, forefinger extended, and the six hundred and fourteen fresh, childish voices chanted as one voice: ‘We give our heads and our hearts to God and our Country! One Country! One Language! One Flag!’¹⁸⁹

- 12.19. The policy was to denationalize the children of the Hawaiian Islands on a massive scale, which included forbidding the children from speaking the Hawaiian national language, only English. Its intent was to obliterate any memory of the national character of the Hawaiian Kingdom that the children may have had and replace it, through inculcation, with American patriotism. “Usurpation of sovereignty during military occupation” and “attempts to denationalize the inhabitants of occupied territory” was recognized as international crimes since 1919.¹⁹⁰
- 12.20. At the close of the Second World War, the United Nations War Commission’s Committee III was asked to provide a report on war crime charges against four Italians accused of denationalization in the occupied state of Yugoslavia. The charge stated that, “the Italians started a policy, on a vast scale, of denationalization. As a part of such policy, they started a system of ‘re-education’ of Yugoslav children. This re-education consisted of forbidding children to use the Serbo-Croat language, to sing Yugoslav songs and forcing them to salute in a fascist way.”¹⁹¹ The question before Committee III was whether or not “denationalization” constituted a war crime that called for prosecution or merely a violation of international law. In concluding that denationalization is a war crime, the Committee reported:

¹⁸⁹ William Inglis, *Hawaii’s Lesson to Headstrong California*, HARPER’S WEEKLY, Feb. 16, 1907, at 227.

¹⁹⁰ See Commission on the Responsibility of the Authors of the War and on Enforcement of Penalties, *Report Presented to the Preliminary Peace Conference, March 29, 1919*, 14 AM. J. INT’L L. 95 (1920).

¹⁹¹ E. Schwelb, *Note on the Criminality of “Attempts to Denationalize the Inhabitants of Occupied Territory”* (Appendix to Doc. C, I. No. XII) – Question Referred to Committee III by Committee I, United Nations War Crime Commission, Doc. III/15 (September 10, 1945), at 1, available at: http://hawaiiankingdom.org/pdf/Committee_III_Report_on_Denationalization.pdf.

“It is the duty of belligerent occupants to respect, unless absolutely prevented, the laws in force in the country (Art. 43 of the Hague Regulations). Inter alia, family honour and rights and individual life must be respected (Art. 46). The right of a child to be educated in his own native language falls certainly within the rights protected by Article 46 (‘individual life’). Under Art. 56, the property of institutions dedicated to education is privileged. If the Hague Regulations afford particular protection to school buildings, it is certainly not too much to say that they thereby also imply protection for what is going to be done within those protected buildings. It would certainly be a mistaken interpretation of the Hague Regulations to suppose that while the use of Yugoslav school buildings for Yugoslav children is safe-guarded, it should be left to the unfettered discretion of the occupant to replace Yugoslav education by Italian education.”¹⁹²

12.21. Denationalization through Germanization also took place during the Second World War. According to Nicholas,

“Within weeks of the fall of France, Alsace-Lorraine was annexed and thousands of citizens deemed too loyal to France, not to mention all its ‘alien-race’ Jews and North African residents, were unceremoniously deported to Vichy France, the southeastern section of the country still under French control. This was done in the now all too familiar manner: the deportees were given half an hour to pack and were deprived of most of their assets. By the end of July 1940, Alsace and Lorraine had become Reich provinces. The French administration was replaced and the French language totally prohibited in the schools. By 1941, the wearing of berets had been forbidden, children had to sing ‘Deutschland über Alles’ instead of ‘La Marseillaise’ at school, and racial screening was in full swing.”¹⁹³

12.22. Under the heading “Germanization of Occupied Territories,” Count III(j) of the Nuremberg Indictment, it provides:

“In certain occupied territories purportedly annexed to Germany the defendants methodically and pursuant to plan endeavored to assimilate those territories politically, culturally, socially, and economically into the German Reich. The defendants endeavored to obliterate the former national character of these territories. In pursuance of these plans and endeavors, the defendants forcibly deported inhabitants who were predominantly non-German and introduced thousands of German colonists. This plan included economic domination, physical conquest, installation of puppet governments, purported *de jure* annexation and enforced conscription into the German Armed Forces. This was carried out in

¹⁹² *Id.*, at 6.

¹⁹³ LYNN H. NICHOLAS, CRUEL WORLD: THE CHILDREN OF EUROPE IN THE NAZI WEB 277 (2005).

most of the occupied countries including: Norway, France...Luxembourg, the Soviet Union, Denmark, Belgium, and Holland.”¹⁹⁴

13. WAR CRIMES: 1949 GENEVA CONVENTION, IV

Article 147—Extensive...appropriation of property, not justified by military necessity and carried out unlawfully and wantonly

- 13.1. In 2013, the United States Internal Revenue Service, hereinafter “IRS,” illegally appropriated \$7.1 million dollars from the residents of the Hawaiian Islands.¹⁹⁵ During this same year, the government of the State of Hawai‘i additionally appropriated \$6.5 billion dollars illegally.¹⁹⁶ The IRS is an agency of the United States and cannot appropriate money from the inhabitants of an occupied state without violating international law. The State of Hawai‘i is an Armed Force of the United States established by an Act of Congress in 1959 and being an entity without any extraterritorial effect, it couldn’t appropriate money from the inhabitants of an occupied state without violating the international laws of occupation.
- 13.2. According to the laws of the Hawaiian Kingdom, taxes upon the inhabitants of the Hawaiian Islands include: an annual poll tax of \$1 dollar to be paid by every male inhabitant between the ages of seventeen and sixty years; an annual tax of \$2 dollars for the support of public schools to be paid by every male inhabitant between the ages of twenty and sixty years; an annual tax of \$1 dollar for every dog owned; an annual road tax of \$2 dollars to be paid by every male inhabitant between the ages of seventeen and fifty; and an annual tax of $\frac{3}{4}$ of 1% upon the value of both real and personal property.¹⁹⁷
- 13.3. The *Merchant Marine Act*, June 5, 1920 (41 U.S. Stat. 988), hereinafter referred to as the *Jones Act*, is a restraint of trade and commerce in violation of international law and treaties between the Hawaiian Kingdom and other foreign states. According to the *Jones Act*, all goods, which includes tourists on cruise ships, whether originating from Hawai‘i or being shipped to Hawai‘i must be shipped on vessels built in the United States that are wholly owned and crewed by United States citizens. And should a foreign flag ship attempt to unload foreign goods and merchandise in the Hawaiian Islands it will have to forfeit its cargo to the U.S. Government, or an amount equal to the value of

¹⁹⁴ See Trial of the Major War Criminals before the International Military Tribunal, *Indictment*, vol. 1, at 27, 63 (Nuremberg, Germany, 1947).

¹⁹⁵ See IRS, *Gross Collections, by Type of Tax and State and Fiscal Year, 1998-2012*, available at: <http://www.irs.gov/uac/SOI-Tax-Stats-Gross-Collections,-by-Type-of-Tax-and-State,-Fiscal-Year-IRS-Data-Book-Table-5>.

¹⁹⁶ See State of Hawai‘i Department of Taxation Annual Reports, available at: <http://files.hawaii.gov/tax/stats/stats/annual/13annrpt.pdf>.

¹⁹⁷ See Civil Code of the Hawaiian Islands, *To Consolidate and Amend the Law Relating to Internal Taxes* (Act of 1882), at 117-120, available at: http://www.hawaiiankingdom.org/civilcode/pdf/CL_Title_2.pdf.

the merchandise or cost of transportation from the person transporting the merchandise.

- 13.4. As a result of the *Jones Act*, there is no free trade in the Hawaiian Islands. 90% of Hawai‘i’s food is imported from the United States, which has created a dependency on outside food. The three major American ship carriers for the Hawaiian Islands are Matson, Horizon Lines, and Pasha Hawai‘i Transport Services, as well as several low cost barge alternatives. Under the *Jones Act*, these American carriers travel 2,400 miles to ports on the west coast of the United States in order to reload goods and merchandise delivered from Pacific countries on foreign carriers, which would have otherwise come directly to Hawai‘i ports. The cost of fuel and the lack of competition drive up the cost of shipping and contribute to Hawai‘i’s high cost of living, and according to the USDA Food Cost, Hawai‘i residents in January 2012 pay an extra \$417 per month for food on a thrifty plan than families who are on a thrifty plan in the United States.¹⁹⁸ Therefore, appropriating monies directly through taxation and appropriating monies indirectly as a result of the *Jones Act* to benefit American ship carriers and businesses are war crimes.

Article 147—Compelling a...protected person to serve in the forces of an [Occupying] Power

- 13.5. The United States Selective Service System is an agency of the United States government that maintains information on those potentially subject to military conscription. Under the *Military Selective Service Act*, “it shall be the duty of every male citizen of the United States, and every other male person residing in the United States, who, on the day or days fixed for the first or any subsequent registration, is between the ages of eighteen and twenty-six, to present himself for and submit to registration at such time or times and place or places, and in such manner, as shall be determined by proclamation of the President and by rules and regulations prescribed hereunder.”¹⁹⁹ Conscription of the inhabitants of the Hawaiian Kingdom unlawfully inducted into the United States Armed Forces through the Selective Service System occurred during World War I (September 1917-November 1918), World War II (November 1940-October 1946), Korean War (June 1950-June 1953), and the Vietnam War (August 1964-February 1973). Andrew L. Pepper, Esq., heads the Selective Service System in the Hawaiian Islands headquartered on the Island of O‘ahu.
- 13.6. Although induction into the United States Armed Forces has not taken place since February 1973, the requirements to have residents of the Hawaiian Island who reach the age of 18 to register with the Selective Service System for possible induction is a war crime.

¹⁹⁸ See United States Department of Agriculture Center for Nutrition Policy and Promotion, *Cost of Food at Home*, available at: <http://www.cnpp.usda.gov/USDAFoodCost-Home.htm#AK%20and%20HI>.

¹⁹⁹ See Title 50 U.S.C. App. 453, The Military Selective Service Act.

Article 147—Willfully depriving a...protected person of the rights of fair and regular trial

- 13.7. Since 18 December 1893, there have been no lawfully constituted courts in the Hawaiian Islands whether Hawaiian Kingdom courts or military commissions established by order of the Commander of PACOM in conformity with the HC IV, GC IV, and the international laws of occupation. All Federal and State of Hawai'i Courts in the Hawaiian Islands derive their authority from the United States Constitution and the laws enacted in pursuance thereof. As such these Courts cannot claim to have any authority in the territory of a foreign state and therefore are not properly constituted to give defendant(s) a fair and regular trial.

Article 147—Unlawful deportation or transfer or unlawful confinement

- 13.8. According to the United States Department of Justice, the prison population in the Hawaiian Islands in 2009 was at 5,891.²⁰⁰ Of this population there were 286 aliens.²⁰¹ Two paramount issues arise—first, prisoners were sentenced by courts that were not properly constituted under Hawaiian Kingdom law and/or the international laws of occupation and therefore were unlawfully confined, which is a war crime under this court's jurisdiction; second, the alien prisoners were not advised of their rights in an occupied state by their state of nationality in accordance with the 1963 *Vienna Convention on Consular Relations*.²⁰² Compounding the violation of alien prisoners rights under the *Vienna Convention*, Consulates located in the Hawaiian Islands were granted exequaturs by the government of the United States by virtue of United States treaties and not treaties between the Hawaiian Kingdom and these foreign states.
- 13.9. In 2003, the State of Hawai'i Legislature allocated funding to transfer up to 1,500 prisoners to private corrections institutions in the United States.²⁰³ By June of 2004, there were 1,579 Hawai'i inmates in these facilities. Although the transfer was justified as a result of overcrowding, the government of the State of Hawai'i did not possess authority to transfer, let alone to prosecute in the first place. Therefore, the unlawful confinement and transfer of inmates are war crimes.

²⁰⁰ See United States Department of Justice's Bureau of Justice Statistics, *Prisoners in 2011*, available at: <http://www.bjs.gov/content/pub/pdf/p11.pdf>.

²⁰¹ See United States Government Accountability Office, *Criminal Alien Statistics: Information on Incarcerations, Arrests, and Costs* (March 2011), available at: <http://www.gao.gov/new.items/d11187.pdf>.

²⁰² See *LaGrand (Germany v. United States of America)*, Judgment, I.C.J. Reports 2001, 466.

²⁰³ See State of Hawai'i, Department of Public Safety, *Response to Act 200, Part III, Section 58, Session Laws of Hawai'i 2003 As Amended by Act 41, Part II, Section 35, Session Laws of Hawai'i 2004*, (January 2005), available at: http://lrhawaii.info/reports/legrpts/psd/2005/act200_58_slh03_05.pdf.

Article 147—The transfer, directly or indirectly, by the Occupying Power of parts of its own civilian population into the territory it occupies, or the deportation or transfer of all or parts of the population of the occupied territory within or outside this territory

- 13.10. Once a state is occupied, international law preserves the *status quo* of the occupied state as it was before the occupation began. To preserve the nationality of the occupied state from being manipulated by the occupying state to its advantage, international law only allows individuals born within the territory of the occupied state to acquire the nationality of their parents—*jus sanguinis*. To preserve the *status quo*, Article 49 of the GC IV mandates that the “Occupying Power shall not...transfer parts of its own civilian population into the territory it occupies.” For individuals, who were born within Hawaiian territory, to be a Hawaiian subject, they must be a direct descendant of a person or persons who were Hawaiian subjects prior to the American occupation that began on 12 August 1898. All other individuals born after 12 August 1898 to the present are aliens who can only acquire the nationality of their parents.
- 13.11. According to the 1890 government census, Hawaiian subjects numbered 48,107, with the aboriginal Hawaiian, both pure and part, numbering 40,622, being 84% of the national population, and the non-aboriginal Hawaiians numbering 7,485, being 16%. Despite the massive and illegal migrations of foreigners to the Hawaiian Islands since 1898, which, according to the State of Hawai‘i numbers 1,302,939 in 2009,²⁰⁴ the *status quo* of the national population of the Hawaiian Kingdom is maintained. Therefore, under the international laws of occupation, the aboriginal Hawaiian population of 322,812 in 2009 would continue to be 84% of the Hawaiian national population, and the non-aboriginal Hawaiian population of 61,488 would continue to be 16%. The balance of the population in 2009, being 918,639, are aliens who were illegally transferred, either directly or indirectly, by the United States as the occupying Power, and therefore are war crimes.

Article 147—Destroying or seizing the [Occupied state’s] property unless such destruction or seizure be imperatively demanded by the necessities of war

- 13.12. On 12 August 1898, the United States seized approximately 1.8 million acres of land that belonged to the government of the Hawaiian Kingdom and to the office of the Monarch. These lands were called Government lands and Crown lands, respectively, whereby the former being public lands and the latter

²⁰⁴ See State of Hawai‘i. Department of Health, Hawai‘i Health Survey (2009), available at: <http://www.ohadatabook.com/F01-05-11u.pdf>; see also David Keanu Sai, *American Occupation of the Hawaiian State: A Century Gone Unchecked*, 1 HAW. J. L. & POL. 63-65 (Summer 2004).

private lands.²⁰⁵ These combined lands constituted nearly half of the entire territory of the Hawaiian Kingdom.

- 13.13. Military training locations include Pacific Missile Range Facility, Barking Sands Tactical Underwater Range, and Barking Sands Underwater Range Expansion on the Island of Kaua‘i; the entire Islands of Ni‘ihau and Ka‘ula; Pearl Harbor, Lima Landing, Pu‘uloa Underwater Range—Pearl Harbor, Barbers Point Underwater Range, Coast Guard AS Barbers Point/Kalaeloa Airport, Marine Corps Base Hawai‘i, Marine Corps Training Area Bellows, Hickam Air Force Base, Kahuku Training Area, Makua Military Reservation, Dillingham Military Reservation, Wheeler Army Airfield, and Schofield Barracks on the Island of O‘ahu; and Bradshaw Army Airfield and Pohakuloa Training Area on the Island of Hawai‘i.
- 13.14. The United States Navy’s Pacific Fleet headquartered at Pearl Harbor hosts the Rim of the Pacific Exercise (RIMPAC) every other even numbered year, which is the largest international maritime warfare exercise. RIMPAC is a multinational, sea control and power projection exercise that collectively consists of activity by the U.S. Army, Air Force, Marine Corps, and Naval forces, as well as military forces from other foreign states. During the month long exercise, RIMPAC training events and live fire exercises occur in open-ocean and at the military training locations throughout the Hawaiian Islands.
- 13.15. In 2006, the United States Army disclosed to the public that depleted uranium (DU) was found on the firing ranges at Schofield Barracks on the Island of O‘ahu.²⁰⁶ It subsequently confirmed DU was also found at Pohakuloa Training Area on the Island of Hawai‘i and suspect that DU is also at Makua Military Reservation on the Island of O‘ahu.²⁰⁷ The ranges have yet to be cleared of DU and the ranges are still used for live fire. This brings the inhabitants who live down wind from these ranges into harms way because when the DU ignites or explodes from the live fire, it creates tiny particles of aerosolized DU oxide that can travel by wind. And if the DU gets into the drinking water or oceans it would have a devastating effect across the islands.

²⁰⁵ Public lands were under the supervision of the Minister of the Interior under Article I, Chapter VII, Title 2—*Of The Administration of Government*, Civil Code, at §39-§48 (1884), and Crown lands were under the supervision of the Commissioners of Crown Lands under *An Act to Relieve the Royal Domain from Encumbrances and to Render the Same Inalienable*, Civil Code, Appendix, at 523-525 (1884). Crown lands are private lands that “descend in fee, the inheritance being limited however to the successors to the throne, and each successive possessor may regulate and dispose of the same according to his will and pleasure, as private property,” *In the Matter of the Estate of His Majesty Kamehameha IV., late deceased*, 2 Haw.715, 725 (1864), subject to *An Act to Relieve the Royal Domain from Encumbrances and to Render the Same Inalienable*.

²⁰⁶ See U.S. Army Garrison-Hawai‘i, Depleted Uranium on Hawai‘i’s Army Ranges, available at: <http://www.garrison.hawaii.army.mil/du/>.

²⁰⁷ *Id.*

- 13.16. The Hawaiian Kingdom has never consented to the establishment of military installations throughout its territory and these installations and war-gaming exercises stand in direct violation of Articles 1, 2, 3 and 4, 1907 Hague Convention, V, *Respecting the Rights and Duties of Neutral Powers and Persons in Case of War on Land*, HC IV, and GC IV, and therefore are war crimes.

E. PROSECUTION OF WAR CRIMES BY NEW ZEALAND AUTHORITIES

14. WAR CRIMES COMMITTED ABROAD

- 14.1. New Zealand ratified the International Criminal Court Rome Statute and deposited its instrument of ratification September 7, 2000, which entrusts national jurisdictions with primary responsibility for the prosecution and punishment of war crimes under the principle of complementarity. Article 1 of the Rome Statute provides, the International Criminal Court “shall be complementary to national criminal jurisdictions,”²⁰⁸ which New Zealand possesses under the *International Crimes and International Criminal Court Act 2000*. In other words, the jurisdiction of the ICC is secondary to the exercise of national jurisdiction by state parties to the Rome Statute, which includes New Zealand.
- 14.2. According to Article 30(1) of the Rome Statute, the defendant is “criminally responsible and liable for punishment...only if the material elements [of the war crime] are committed with intent and knowledge.” Therefore, the Prosecutor of the International Criminal Court will prosecute if there is a mental element that includes a volitional component (intent) as well as a cognitive component (knowledge). Article 30(2) further clarifies that “a person has intent where: (a) In relation to conduct, that person means to engage in the conduct; [and] (b) In relation to a consequence, that person means to cause that consequence or is aware that it will occur in the ordinary course of events.”
- 14.3. With regard to knowledge, Article 30(3) of the Rome Statute provides that “‘knowledge’ means awareness that a circumstance exists or a consequence will occur in the ordinary course of events.” “A mistake of fact,” according Article 32(1), “shall be a ground for excluding criminal responsibility only if it negates the mental element required by the crime,” and a “mistake of law,” according to Article 32(2), “shall not be a ground for excluding criminal responsibility [unless] ...it negates the mental element required by such a crime, or as provided for in article 33.” Article 33 provides that a crime that “has been committed by a person pursuant to an order of a Government or of a superior, whether military or civilian, shall not relieve that person of criminal responsibility unless: (a) the person was under a legal obligation to obey

²⁰⁸ See Rome Statute, International Criminal Court, para. 10, preamble: “...the International Criminal Court established under this Statute shall be complementary to national criminal jurisdictions.”

orders of the Government or the superior in question; (b) the person did not know that the order was unlawful; and (c) the order was not manifestly unlawful.”

- 14.4. Is there a particular time or event that could serve as a definitive point of knowledge for the purpose of *mens rea* and the application of the principles of mistake of fact and mistake of law? In other words, where can there be “awareness that a circumstance exists or a consequence will occur in the ordinary course of events” stemming from the illegality of the overthrow of the Hawaiian Kingdom government on January 17, 1893? For the United States government that definitive point would be December 18, 1893, when President Cleveland notified the Congress of the illegality of the overthrow of the Hawaiian Kingdom government and called the landing of U.S. troops an act of war. Through executive mediation and *exchange of notes*, an executive agreement was entered into with Queen Lili‘uokalani to reinstate the Hawaiian government on that very same day the President notified the Congress, but it wasn’t dispatched from Honolulu to Washington, D.C. until December 20. The United States Supreme Court considers these types of executive agreements by the President as sole-executive agreements, which do not rely on Senate ratification or approval of the Congress, and have the force and effect of a treaty.²⁰⁹ The United States Supreme Court explained:

“In addition to congressional acquiescence in the President’s power to settle claims, prior cases of this Court have also recognized that the President does have some measure of power to enter into executive agreements without obtaining the advice and consent of the Senate. In *United States v. Pink*, 315 U. S. 203 (1942), for example, the Court upheld the validity of the Litvinov Assignment, which was part of an Executive Agreement whereby the Soviet Union assigned to the United States amounts owed to it by American nationals so that outstanding claims of other American nationals could be paid.”²¹⁰

- 14.5. For the private sector, however, it is the opinion of the author of this report that the United States’ 1993 apology for the illegal overthrow of the Hawaiian Kingdom government would serve as that definitive point of knowledge for those who are not in the service of government. In the form of a Congressional joint resolution enacted into United States law, the law specifically states that the Congress “on the occasion of the 100th anniversary of the illegal overthrow of the Kingdom of Hawai‘i on January 17, 1893

²⁰⁹ See *Dames & Moore v. Regan*, 453 U. S. 654, 679, 682-683 (1981); *United States v. Pink*, 315 U. S. 203, 223, 230 (1942); *United States v. Belmont*, 301 U. S. 324, 330-331 (1937); see also L. Henkin, *Foreign Affairs and the United States Constitution* 219, 496, n. 163 (2d ed. 1996) (“Presidents from Washington to Clinton have made many thousands of agreements ... on matters running the gamut of U. S. foreign relations”).

²¹⁰ See *Dames & Moore v. Regan*, 453 U.S. 654, 682 (1981).

acknowledges the historical significance.”²¹¹ Additionally, the Congress also urged “the President of the United States to also acknowledge the ramifications of the overthrow of the Kingdom of Hawai‘i.”²¹² Despite the mistake of facts and law riddled throughout the apology resolution, whether by design or not, it nevertheless serves as a specific point of knowledge and the ramifications that stem from that knowledge. Evidence that the United States knew of the ramifications was clearly displayed in the apology law’s disclaimer, “Nothing in this Joint Resolution is intended to serve as a settlement of any claims against the United States.”²¹³ It is a presumption that everyone knows the law, which stems from the legal principle *ignorantia legis neminem excusat*—ignorance of the law excuses no one. Unlike the United States government, being a public body, the State of Hawai‘i government cannot claim to be a government at all, and therefore is merely a private organization. Awareness and knowledge for members of the State of Hawai‘i would have begun with the enactment of the Apology resolution in 1993.

- 14.6. In *State of Hawai‘i v. Lorenzo* (1994),²¹⁴ the State of Hawai‘i Intermediate Court of Appeals considered an appeal by a defendant that argued the courts in the State of Hawai‘i have no jurisdiction as a direct result of the illegal overthrow of the government of the Hawaiian Kingdom. The basis of the appeal stemmed from the lower court’s ruling, “Although the Court respects Defendant’s freedom of thought and expression to believe that jurisdiction over the Defendant for the criminal offenses in the instant case should be with a sovereign, Native Hawaiian entity, like the Kingdom of Hawaii [Hawai‘i], such an entity does not preempt nor preclude jurisdiction of this court over the above-entitled matter.”²¹⁵ After acknowledging that the “United States Government recently recognized the illegality of the overthrow of the Kingdom and the role of the United States in that event,” the appellate court affirmed the lower court’s decision. The appellate court reasoned, the “essence of the lower court’s decision is that even if, as Lorenzo contends, the 1893 overthrow of the Kingdom was illegal, that would not affect the court’s jurisdiction in this case.” However, the appellate court did admit its “rationale is open to question in light of international law.”²¹⁶ This is clearly awareness, on the part of the appellate court, that its decision was subject to international law.
- 14.7. In light of both the lower and appellate courts’ ignorance of international law and the presumption of continuity of an established state despite the illegal overthrow of its government, it clearly presents a case of applying the wrong law. According to the International Criminal Court’s elements of crimes, there

²¹¹ See Apology Resolution, *supra* note 140.

²¹² *Id.*

²¹³ *Id.*, at 1514.

²¹⁴ *State of Hawai‘i v. Lorenzo*, 77 Haw. 219 (1994).

²¹⁵ *Id.*, at 220.

²¹⁶ *Id.*, at 220-221.

“is no requirement for a legal evaluation by the perpetrator,” but “only a requirement of awareness.”²¹⁷ The *Lorenzo case* has become the seminal case used to quash all claims by defendants that the courts in the State of Hawai‘i are illegal as a direct result of the illegal overthrow. There can be no doubt that the decisions made by each of the judges confronted with this defense has ruled against the defendants with full awareness since the Apology resolution in 1993 and the *Lorenzo case* in 1994.

- 14.8. While there exists under international law the duty to not intervene in the internal affairs of another State, international law, however, recognizes the State’s duty to protect it’s own citizens abroad. In the *Lotus case*, the Permanent Court of International Justice stated there is no “general prohibition to [s]tates to extend the application of their laws and the jurisdiction of their courts to persons, property and acts outside their territory.”²¹⁸

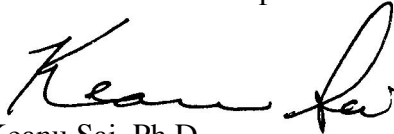
15. CONCLUSION

- 15.1. The prolonged occupation of the Hawaiian Kingdom is such an egregious act that it could only have gone unnoticed by the international community because of the manipulation of the facts by the United States since the turn of the twentieth century. Through a very effective program of denationalization—*Americanization*, memory of the Hawaiian Kingdom was nearly obliterated from the minds of the people of the Hawaiian Islands in a span of three generations, which underline the severity of the Hawaiian situation and the quest toward justice and redress under international humanitarian law.
- 15.2. New Zealand is a party to the GC IV and therefore the exercise of universal jurisdiction has become an obligation. Furthermore, Article 148 of the GC IV provides to the effect that a state shall not be allowed to absolve itself or any other state of any liability incurred by itself or by another state with respect to the grave breaches in the Convention, which are war crimes recognized under New Zealand law—the *International Crimes and International Criminal Court Act 2000*, and considered felonies.
- 15.3. The United States has deliberately violated and continues to violate the neutrality of the Hawaiian Kingdom, guaranteed by customary international law, the 1862 Hawaiian-Spanish Treaty, the 1871 Treaty of Washington and the 1907 Hague Convention, V, Rights and Duties of Neutral States, which constitutes an act of aggression, and has not complied with the HC IV, and the GC IV, in its prolonged and illegal occupation of the Hawaiian Kingdom. As such, war crimes have and continue to take place in the Hawaiian Islands with impunity.

²¹⁷ See ICC Elements of Crimes, *supra* note 169, Article 8 – Introduction.

²¹⁸ PCIJ Ser. A, no. 10, 10.

15.4. The gravity of the Hawaiian situation has been heightened by the DPRK's declaration of war against the United States and South Korea on March 30, 2013 and its specific mention of targeting Hawai'i, cannot be taken lightly.²¹⁹ The date of this report is also the very day Japan attacked the military installations of the United States on the island of O'ahu on December 7, 1941. What is rarely mentioned are civilian casualties, who numbered 55 to 68 deaths and approximately 35 wounded. According to Kelly, "It is not 100 percent clear, but it seems likely that most, if not all, of the casualties in civilian areas were inflicted by 'friendly fire,' our own anti-aircraft shells falling back to earth and exploding after missing attacking planes."²²⁰ The advancement of modern weaponry, which includes cyber warfare,²²¹ far surpasses the conventional weapons used during the Japanese attack, and the New Zealand Government should be concerned for the safety of their expatriates that currently reside within the territory of the Hawaiian Kingdom who are afforded protection under the Hawaiian-British Treaty of 1851.



Keanu Sai, Ph.D.

²¹⁹ Legally speaking, the armistice agreement of July 27, 1953 did not bring the state of war to an end between North Korea and South Korea because a peace treaty is still pending. The significance of the DPRK's declaration of war of March 30, 2013, however, has specifically drawn the Hawaiian Islands into the region of war because it has been targeted as a result of the United States prolonged occupation.

²²⁰ Dr. Richard Kelly, *Pearl Harbor Attack Killed a Lot of Civilians Too* (Dec. 11, 2010), available at: <http://saturdaybriefing.outrigger.com/featured-post/pearl-harbor-attack-killed-a-lot-of-civilians-too/>.

²²¹ North Korea has been suspected of cyber warfare against South Korea, available at: <http://www.theguardian.com/world/2013/mar/20/south-korea-under-cyber-attack>.

APPENDICES

- Appendix I—David Keanu Sai, Curriculum Vitae
- Appendix II—David Keanu Sai, *Report Military Government: Transformation of the State of Hawai‘i* (July 2, 2015)
- Appendix III—Hawaiian-British Treaty of Friendship, Commerce and Navigation (July 10, 1851)
- Appendix IV—Hawaiian Government Registry (1893)
- Appendix V—Programme for Patriotic Exercises in the Public Schools, Adopted by the Department of Public Instruction (1906)
- Appendix VI—William Inglis, *Hawaii’s Lesson to Headstrong California*, HARPER’S WEEKLY, Feb. 16, 1907

Appendix “I”

Curriculum Vitae

DAVID KEANU SAI



EXPERTISE:

International relations, state sovereignty, international laws of occupation, United States constitutional law, Hawaiian constitutional law, and Hawaiian land titles.

ACADEMIC QUALIFICATIONS:

- Dec. 2008: Ph.D. in Political Science specializing in international law, state sovereignty, international laws of occupation, United States constitutional law, and Hawaiian constitutional law, University of Hawai'i, Manoa, H.I.
- Doctoral dissertation titled, "American Occupation of the Hawaiian Kingdom: Beginning the Transition from Occupied to Restored State."
- May 2004: M.A. in Political Science specializing in International Relations, University of Hawai'i, Manoa, H.I.
- May 1987: B.A. in Sociology, University of Hawai'i, Manoa, H.I.
- May 1984: A.A. in Pre-Business, New Mexico Military Institute, Roswell, N.M., U.S.
- May 1982: Diploma, Kamehameha Schools, Honolulu, H.I.

PANELS AND PRESENTATIONS:

- *Sovereignty and Imperialism: Non-European Powers in the Age of Empire*, invited presenter at an academic conference, University of Cambridge, UK, September 10-12, 2015.

47-605 Puapo`o Place
Kane`ohe, HI 96744
Tel: (808) 383-6100
anu@hawaii.edu

- *The Aftermath of the U.S. Department of Interior Proposals Regarding Federal Recognition: Clarification*, American Constitution Society's William S. Richardson School of Law Student Chapter and 'Ahahui o Hawai'i, University of Hawai'i at Manoa, Presenter-Panelist with Professor Williamson Chang and Dr. Willy Kauai, September 2, 2014.
- *Alternative Visions of Sovereignty*, American Constitution Society's William S. Richardson School of Law Student Chapter, University of Hawai'i at Manoa, Presenter-Panelist with Professor Williamson Chang and former Governor John Waihe'e, III, April 17, 2014.
- *The Hawai'i-Connecticut Missionary Connection: Rumors and Realities*, Hartford Seminary, Panellist-Discussant with Aolani Kailihou, Dr. Stephen Blackburn, and Dr. Clifford Putney, April 10, 2014.
- *Hawai'i: An American State or a State under American Occupation*, Central Connecticut State University, April 10, 2014.
- *Hawai'i: An American State or a State under American Occupation*, University of Massachusetts Boston, April 8, 2014.
- *Hawai'i: An American State or a State under American Occupation*, Harvard University, April 8, 2014.
- *Hawai'i: An American State or a State under American Occupation*, New York University, April 7, 2014.
- *Hawai'i: An American State or a State under American Occupation*, Swiss Diplomats—Zurich Network and Foraus, University of Zurich, Switzerland, November 11, 2013.
- *Puana Ka `Ike Lecture Series (Imparting Knowledge)*, Kamehameha Investment Corporation, Keahou Hotel, Kona, Hawai'i. A presentation entitled "1893 Executive Agreements and their Impact Today," March 15, 2013.
- *Why the Birthers Are Right For All The Wrong Reasons*, Harvard University, Massachusetts, October 12, 2012.
- *Why the Birthers Are Right For All The Wrong Reasons*, University of Massachusetts, Boston, October 12, 2012.
- *Puana Ka `Ike Lecture Series (Imparting Knowledge)*, Kamehameha Investment Corporation, Keahou Hotel, Kona, Hawai'i. A presentation entitled "1893 Executive Agreements and their Impact Today," March 16, 2012.

- “The American Occupation of the Hawaiian Kingdom: Beginning the Transition from Occupied to Restored State.” *Sustainability for Biological Engineers Lecture Series*, University of Hawai‘i at Manoa, Agricultural Science Bldg. 219, December 7, 2010.
- “1893 Cleveland-Lili‘uokalani Executive Agreements and their Impact Today.” Presentation at the *Annual Convention of Hawaiian Civic Clubs*, Sheraton Keauhou Bay Resort & Spa, Island of Hawai‘i, November 9, 2010.
- “The History of the Hawaiian Kingdom.” Presentation at the annual convention of the *Victorian Society of Scholars*, Kana‘ina Bldg., Honolulu, October 28, 2010.
- “Pu‘a Foundation: E pu pa`akai kakou.” Joint presentation with Pu‘a Foundation of an educational package and curriculum I authored for teaching Hawaiian history, *Healing Our Spirit World, The Sixth Gathering*, Hawai‘i Convention Center, September 7, 2010.
- “Evolution of Hawaiian land Titles and the Impact of the 1893 Executive Agreements.” Sponsored by the County of Maui, Real Property Tax Division, HGEA Bldg, Kahului, June 28, 2010.
- “Evolution of Hawaiian land Titles and the Impact of the 1893 Executive Agreements.” Sponsored by the City & County of Honolulu, Real Property Assessment Division, Mission Memorial Auditorium, June 9, 2010.
- “Hawai‘i’s Legal and Political History.” Sponsored by *Kokua A Puni Hawaiian Student Services*, UH Manoa, Center for Hawaiian Studies, UHM, May 26, 2010.
- “Ua Mau Ke Ea: Sovereignty Endured.” Joint presentation with Pu‘a Foundation of an educational package and curriculum I authored for teaching Hawaiian history, *Native Hawaiian Education Association Conference*, Windward Community College, March 19, 2010.
- *Puana Ka `Ike Lecture Series (Imparting Knowledge)*, Kamehameha Investment Corporation, Keahou Hotel, Kona, Hawai‘i. A presentation entitled “Evolution of Hawaiian Land Titles and its Impact Today,” March 12, 2010.
- “1893 Cleveland-Lili‘uokalani Agreement of Restoration (Executive Agreement).” Sponsored by the Haloa Research Center, Baldwin High School Auditorium, February 20, 2010.
- “1893 Cleveland-Lili‘uokalani Agreement of Restoration (Executive Agreement).” Sponsored by Kamehameha Schools’ Kula Hawai‘i Teachers Professional Development, Kapalama Campus, Konia, January 4, 2010.
- “The Legal and Political History of Hawai‘i.” Sponsored by House Representative Karen Awana, National Conference of Native American State Legislators, State of Hawai‘i Capital Bldg, November 16, 2009.

- “The Myth of Ceded Lands: A Legal Analysis.” Sponsored by Hawaiian Studies, Ho`a and Ho`okahua (STEM), Maui Community College, Noi`i 12-A, November 2, 2009.
- “The Legal and Political History of Hawai`i.” Presentation to the *Hui Aloha `Aina Tuahine*, Center for Hawaiian Studies, University of Hawai`i at Manoa, October 30, 2009.
- “The Legal and Political History of Hawai`i.” Presentation to *Kahuewai Ola*, Queen Lili`uokalani Center for Student Services, University of Hawai`i at Manoa, October 23, 2009.
- “The Myth of Ceded Lands: A Legal Analysis.” Sponsored by Kamehameha Schools Ka`iwakiloumoku Hawaiian Cultural Events Series, Ke`eliokalani Performing Arts Center, Kamehameha Schools Kapalama campus, October 21, 2009.
- “The Myth of Ceded Lands: A Legal Analysis.” Sponsored by ASUH and Hawaiian Studies, Paliku Theatre, Windward Community College, September 10, 2009.
- *Puana Ka `Ike Lecture Series (Imparting Knowledge)*, Kohana Center/Kamehameha Investment Corporation, Keauhou II Convention Center, Kona, Hawai`i. A presentation entitled “The Myth of Ceded Lands: A Legal Analysis,” March 13, 2009.
- “American Occupation of the Hawaiian Kingdom: Beginning the Transition from Occupied to Restored State.” Briefing for Colonel James Herring, Army Staff Judge Advocate, 8th Theater Sustainment Command, and his staff officers, Wheeler AAF Courthouse, U.S. Army Pacific, Wahiawa, Hawai`i, February 25, 2009.
- *Ka Nalu: Towards a Hawaiian National Consciousness*, Symposium of the Hawaiian Society of Law and Politics, University of Hawai`i at Manoa, Imin Conference Bldg (East West Center). Presented a portion of my doctoral dissertation entitled “The Myth of Ceded Lands: A Legal Analysis,” February 28, 2009.
- *Manifold Destiny: Disparate and Converging Forms of Political Analysis on Hawai`i Past and Present*, International Studies Association Annual Conference, San Francisco, California, March 26, 2008. Presented a paper entitled “A Slippery Path Towards Hawaiian Indigeneity: An Analysis and Comparison between Hawaiian Nationality and Hawaiian Indigeneity and its Use and Practice in Hawai`i today,” March 26, 2008.
- *Mana Kupuna Lecture Series*, University of Waikato, New Zealand. A presentation entitled “Legal and Political History of the Hawaiian Kingdom,” March 5, 2008.
- *Indigenous Politics Colloquium* speaker series, Department of Political Science, University of Hawai`i at Manoa. Presented an analysis and comparison between Hawaiian State sovereignty and Hawaiian indigeneity and its use and practice in Hawai`i today,” January 30, 2007.

- Conference at Northeastern Illinois University entitled *Dialogue Under Occupation: The Discourse of Enactment, Transaction, Reaction and Resolution*. Presented a paper on a panel entitled "Prolonged Occupation of the Hawaiian Kingdom," Chicago, Illinois, November 10, 2006.
- The 14th Biennial Asian/Pacific American Midwest Student Conference, "Refocusing Our Lens: Confronting Contemporary Issues of Globalization and Transnationalism." Presented article "American Occupation of the Hawaiian State: A Century Unchecked" on Militarization Panel, Oberlin College, Ohio, February 18, 2006.
- 2005 American Studies Association Annual Conference. Panelist on a roundtable discussion entitled, "The Case for Hawai'i's Independence from the United States - A Scholarly and Activist Roundtable Discussion," with Keala Kelly and Professor Kehaulani Kauanui. Renaissance Hotel, Washington, D.C., November 4, 2005.
- Kamehameha Schools 2005 Research Conference on Hawaiian Well-being, sponsored by the Kamehameha Schools *Policy Analysis & Systems Evaluation (PACE)*. Presented article "Employing Appropriate Theory when Researching Hawaiian Kingdom Governance" with two other presenters, Malcolm Naea Chun and Dr. Noelani Goodyear-Kaopua. Radisson Prince Kuhio Hotel, Waikiki, October 22, 2005.
- 1st Annual Symposium of the *Hawaiian Society of Law & Politics* showcasing the first edition of the *Hawaiian Journal of Law & Politics (summer 2004)*. Presented article "American Occupation of the Hawaiian State: A Century Gone Unchecked," with response panellists Professor John Wilson, Political Science, and Kanale Sadowski, 3rd year law student, Richardson School of Law. Imin International Conference Center, University of Hawai'i at Manoa, April 16, 2005.
- "A Symposium on Practical Pluralism." Sponsored by the *Office of the Dean*, William S. Richardson School of Law. Panelist with Professor Williamson Chang and Dr. Kekuni Blaisdell, University of Hawai'i at Manoa, Honolulu, April 16-17, 2004.
- "Mohala A'e: Blooming Forth," *Native Hawaiian Education Association's 5th Annual Conference*. Presented a workshop entitled "Hawaiian Epistemology." Windward Community College, Kane'ohe, March 23, 2004.
- "First Annual 'Ahahui o Hawai'i Kukakuka: Perspectives on Federal Recognition." Guest Speaker at a symposium concerning the Akaka Bill. Sponsored by the *'Ahahui o Hawai'i* (organization of native Hawaiian law students), University of Hawai'i at Manoa Richardson School of Law, Honolulu, March 12, 2004.
- "The Status of the Kingdom of Hawai'i." A debate with Professor Didrick Castberg, University of Hawai'i at Hilo (Political Science), and moderator Professor Todd Belt University of Hawai'i at Hilo (Political Science). Sponsored by the *Political Science Club*, University of Hawai'i at Hilo, Campus Center, March 11, 2004.

- “The Political History of the Hawaiian Kingdom: Past and Present.” A presentation to the *Hawai`i Island Association of Hawaiian Organizations*, Queen Lili`uokalani Children’s Center, Hilo, February 13, 2004.
- “Globalization and the Asia-Pacific Region.” Panel with Dr. Noenoe Silva (Political Science). *East-West Center Spring 2004 Core Course*, Honolulu, February 4, 2004.
- Televised symposium entitled, “Ceded Lands.” Other panelists included Professor Jon Van Dyke (Richardson School of Law) and Professor Lilikala Kame`eleihiwa (Center for Hawaiian Studies). Sponsored by the *Office of Hawaiian Affairs*, Wai`anae, August 2003.
- “Hawai`i’s Road to International Recovery, II.” Sponsored by *Kipuka*, University of Hawai`i at Hilo, September 25, 2003.
- “An Analysis of Tenancy, Title, and Landholding in Old Hawai`i.” Sponsored by *Kipuka*, University of Hawai`i at Hilo, September 26, 2002.
- “The Hawaiian Kingdom in Arbitration Proceedings at the Permanent Court of Arbitration, The Hague, Netherlands.” A presentation at the 6th World Indigenous Peoples Conference on Education, Stoney Park, Morley, Alberta, Canada, August 6, 2002.
- "The Hawaiian Kingdom and the United States of America: A State to State Relationship." *Reclaiming the Legacy*, U.S. National Archives and Records Administration, University of San Francisco, May 4, 2002
- “Hawai`i’s Road to International Recovery.” Sponsored by *Kipuka*, University of Hawai`i at Hilo, April 11, 2002.
- “Hawai`i’s Road to International Recovery,” a presentation to the Officers Corps of the 25th Infantry Division, U.S. Army, Officer’s Club, Schofield Barracks, Wahiawa, February 2001.
- “Lance Larsen vs. the Hawaiian Kingdom,” presentation to the *Native Hawaiian Bar Association*, quarterly meeting, Kana`ina Building, Honolulu, 2001.
- “Hawaiian Political History,” *Hawai`i Community College*, Hilo, March 5, 2001.
- “The History of the Hawaiian Kingdom,” A guest speaker at the *Aloha March* rally in Washington, D.C., August 12, 1998.
- Symposium entitled, “Human Rights and the Hawaiian Kingdom on the occasion of the 50th anniversary of the Universal Declaration of Human Rights.” Other panelist included Francis Boyle (Professor of International Law, University of Illinois), Mililani Trask (Trustee, Office of Hawaiian Affairs), Richard Grass (Lakota Sioux Nation), and Ron Barnes (Tununak Traditional Elders Council, Alaska). University of Hawai`i at Hilo, April 16, 1998.

- Symposium entitled, “Perfect Title Company: Scam or Restoration.” Sponsored by the *Hawai`i Developers Council*, Hawai`i Prince Hotel, Honolulu, August 1997.

PUBLICATIONS:

Book, "Ua Mau Ke Ea-Sovereignty Endures: An Overview of the Political and Legal History of the Hawaiian Islands." (Pu`a Foundation, Honolulu, 2011).

Article, “1893 Cleveland-Lili`uokalani Executive Agreements.” November 28, 2009, unpublished, online at <http://www2.hawaii.edu/~anu/publications.html>.

Article, “Establishing an Acting Regency: A Countermeasure Necessitated to Preserve the Hawaiian State.” November 28, 2009, unpublished, online at <http://www2.hawaii.edu/~anu/publications.html>.

Book, “Land Titles in the Hawaiian Islands: From Origins to the Present (forthcoming).” Contract signed with University of Hawai`i Press, May 7, 2009.

Article, “The Myth of Ceded Lands and the State’s Claim to Perfect Title.” *Ka Wai Ola o OHA Newspaper*, Office of Hawaiian Affairs, April 2009.

Dissertation, “American Occupation of the Hawaiian Kingdom: Beginning the Transition from Occupied to Restored State,” University of Hawai`i at Manoa, Political Science, December 2008, online at <http://www2.hawaii.edu/~anu/publications.html>.

Article, “A Slippery Path towards Hawaiian Indigeneity: An Analysis and Comparison between Hawaiian State Sovereignty and Hawaiian Indigeneity and its Use and Practice in Hawai`i Today,” *Journal of Law and Social Challenges* (San Francisco School of Law), Vol. 10 (Fall 2008), online at <http://www2.hawaii.edu/~anu/publications.html>.

Book Review for “Kahana: How the Land was Lost,” *The Contemporary Pacific: A Journal of Island Affairs*, Vol. 15, No. 1 (2005), online at <http://www2.hawaii.edu/~anu/publications.html>.

Article, “Experts Validate Legitimacy of International Law Case.” *Ka Wai Ola o OHA Newspaper*, Office of Hawaiian Affairs, August 2004.

“American Occupation of the Hawaiian State: A Century Unchecked,” *Hawaiian Journal of Law and Politics*, vol. 1 (Summer 2004), online journal at: <http://www2.hawaii.edu/~hsjp/journal.html>.

Article, “The Indian Commerce Clause sheds Light on Question of Federal Authority over Hawaiians,” *Ka Wai Ola o OHA Newspaper*, Office of Hawaiian Affairs, September 2003.

Article, “Before Annexation: Sleight of Hand—Illusion of the Century.” *Ka Wai Ola o OHA Newspaper*, Office of Hawaiian Affairs, July 1998.

“Unpublished Short Essays” on line at <http://hawaiiankingdom.org/info-nationals.shtml>

- “The Hawaiian Kingdom: A Constitutional Monarchy”
- “The Relationship between the Hawaiian Kingdom and the United States”
- “Revisiting the Fake Revolution of January 17, 1893”
- “What does TWA Flight 800 and the Hawaiian Kingdom have in Common”
- “American Migration to the Hawaiian Kingdom and the Push for State into the American Union”
- “Hawaiian Nationality: Who Comprises the Hawaiian Citizenry?”
- “The Vision of the *acting* Council of Regency”

VIDEO/RADIO:

Video: “Ka‘apuni Honua, KS Song Contest Preshow,” *Kamehameha Schools Song Contest*, KGMB television, March 21, 2014.

Video: “Hawai‘i and the Law of Occupation.” *Lecture Series of the Kaleimaileali‘i Hawaiian Civic Club*, ‘Olelo Community Television, March 11, 2009.

Video: “Title Insurance and Land Ownership in Hawai‘i.” *Lecture Series of the Kaleimaileali‘i Hawaiian Civic Club*, ‘Olelo Community Television, February 4, 2009.

Video: “What are Ceded Lands?” *Lecture Series of the Kaleimaileali‘i Hawaiian Civic Club*, ‘Olelo Community Television, December 22, 2009.

Video: “Hawaiian Kingdom Law and Succession.” *Lecture Series of the Kaleimaileali‘i Hawaiian Civic Club*, ‘Olelo Community Television, November 16, 2008.

Video: “Kamehameha I: From Chiefly to British Governance.” *Lecture Series of the Kaleimaileali‘i Hawaiian Civic Club*, ‘Olelo Community Television, July 23, 2008.

Internet Radio: “The Gary Baumgarten Report News Talk Online: Hawai‘i 'Kingdom' Proponent Makes Case For An Independent Hawai‘i.” Guest on a daily talk internet radio show, <http://garybaumgarten.blogspot.com/2008/04/hawaii-kingdom-proponent-makes-case-for.html>, April 11, 2008.

Radio: “Talk Story with Uncle Charlie.” Guest on a weekly talk radio show. *KNUI AM 900*, Kahului, January 23, 2004.

Radio: “Perspective.” Co-host with Keaumiki Akui for a weekly talk radio show concerning Hawaiian political history. *KCCN AM 1420*, Honolulu, 1999-2001.

Video: “Hawaiian Kingdom Law a Presentation.” *Na Maka o ka Aina*, 1999.

Video: Segments of *Aloha Quest* (six-hour broadcast), KFVE television, Honolulu, December 19, 1999.

- “The Hawaiian Kingdom”

- “What is a Hawaiian subject”
- “Attempted Overthrow of 1893”
- “The Annexation that Never Was”
- “Internal Laws of the United States”
- “Supreme Courts and International Courts”
- “U.S. Senate debate: Apology resolution, Oct. 1993”

MILITARY:

Aug. 1994: Honourably Discharged
 Dec. 1990: Diploma, *U.S. Army Field Artillery Officer Advanced Course*, Fort Sill, OK
 May 1990: Promoted to Captain (O-3)
 Apr. 1990: Diploma, *U.S. Air Force Air Ground Operations School*, Hurlbert Field, FL
 May 1987: Promoted to 1st Lieutenant (O-2)
 Sep. 1987: Diploma, *U.S. Army Field Artillery Officer Basic Course*, Fort Sill, OK
 Sep. 1984: Assigned to *1st Battalion, 487th Field Artillery*, Hawai`i Army National Guard, Honolulu, H.I.
 May 1984: Army Reserve Commission, 2nd Lieutenant (O-1), Early Commissioning Program (ECP) from the New Mexico Military Institute, Roswell, NM

GENERAL DATA:

Nationality: Hawaiian
 Born: July 13, 1964, Honolulu, H.I.

Appendix “II”

Dr. Keanu Sai
Political Scientist
P.O. Box 2194 • Honolulu, HI 96805-2194 • Phone: 808-383-6100 • E-Mail: keanu.sai@gmail.com

July 2, 2015

Mike McCartney
Chief of Staff, Governor
Executive Chambers
State Capitol
Honolulu, Hawaii 96813

Re: Report on Military Government

Dear Mike:

Enclosed please find a report I authored, titled *Military Government: Transformation of the State of Hawai'i*, for your consideration. As you know after we met on three previous occasions, this is a serious matter with profound political and economic consequences. After our last meeting I scoured through the laws and customs of war and international humanitarian law, and I discovered that the State of Hawai'i is fully authorized to declare itself as a Military Government in accordance with provisions in the State Constitution and the laws and customs of war during occupation.

The process will be reminiscent of Governor Poindexter's declaration of a Military Government under martial law in 1941, but a civilian rather than a military officer will be the Military Governor. It will also be shorn of the military dictatorship that plagued the Military Government then, and, as you will see in the report, it will be pretty much business as usual with some alterations necessary because of international law. The State of Hawai'i is currently playing in a negative-sum game and it needs to take the necessary steps to gain positive-sums. The State of Hawai'i does not have the luxury of time on its side.

I spoke with my client who is the Swiss citizen and he has agreed not to pursue the re-filing of the complaint to Swiss authorities, but only on condition that the State of Hawai'i begins to comply with the laws and customs of war during occupation by establishing a Military Government. My other client, Mr. Gumapac has also agreed to the same terms regarding the State of Hawai'i judge that presided over his unfair trial and the officers from the Sheriff's Department who pillaged his home, so long as there is restitution so he can return to his home and property. He will, however, maintain his criminal complaint against Deutsche Bank and Joseph Ackermann with the Swiss Authorities.

I will also be presenting this report as a paper at an academic conference at the University of Cambridge, England, in September, titled *Sovereignty and Imperialism: Non European*

Powers in the Age of Empire. I am enclosing a copy of my letter of invitation. Oxford Press will also publish papers presented at the conference.

It is crucial that we maintain a line of communication on this very delicate topic, and I look forward to another meeting with you after you've gone over the report. I am also enclosing a flash-drive that has Appendix I-VI of the report.

Sincerely,

Keanu Sai, Ph.D.

enclosures



Dr. David Motadel

Gonville and Caius College
Trinity Street
Cambridge CB2 1TA

Tel.: +44 (0)1223 332458

Mobile: +44 (0)7900652219

E-Mail: dm408@cam.ac.uk

Dr. Keanu Sai
P.O. Box 2194
Honolulu, HI 96805-2194

USA

Cambridge, 20 March 2015

Letter of Invitation

Dear Dr. Sai,

We hereby have the honour to invite you to the conference *Sovereignty and Imperialism: Non-European Powers in the Age of Empire* to be held at the University of Cambridge, from 10 to 12 September 2015.

The conference will explore how the few formally independent non-European states, most notably Abyssinia, China, Japan, the Ottoman Empire, Persia and Siam, managed to keep European imperialism at bay, while others, such as Hawaii, Korea, Madagascar and Morocco, struggled but then succumbed to imperial powers.

We would be delighted if you would be interested in contributing a paper on relations between Europe, America and Hawaii. We also plan to publish the papers in a volume with Oxford University Press.

We will be able to provide accommodation at Cambridge and cover up to \$ 150 of your travel costs.

Yours sincerely,

David Motadel



Military Government: Transformation of the State of Hawai‘i

Dr. Keanu Sai
Political Scientist

July 2, 2015

P.O. Box 2194
Honolulu, HI 96805-2194
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SUMMARY

The author's doctoral research¹ in political science, published law reviewed articles,² and books³ are focused on Hawai'i's legal status as an occupied state that has gone unchecked for over a century. Not only were the international rights of a neutral country violated, but also the violation of human rights took place on a grand scale that was hidden under a cloak of deception and lies. These abuses are now coming to the forefront as documents are surfacing that has changed Hawai'i before the whole world.

Critical to the author's research was finding a remedial prescription to right the wrong, given the magnitude and complexity of Hawai'i's situation. The author's conclusion in his doctoral dissertation was, "Establishing a military government will shore up these blatant abuses of protected persons under one central authority, that has not only the duty, by the obligation, of suppressing conduct contrary to the Hague and Geneva conventions taking place in an occupied State."⁴

This report provides a comprehensive analysis and legal reasoning for the State of Hawai'i to transform itself from an Armed Force to a Military Government, in light of the growing knowledge and awareness of Hawai'i's legal status as an occupied state. The transformation must take place in conformity with the laws and customs of war during occupation and international humanitarian law. This revelation has profound ramifications not for only the State of Hawai'i and the United States, but also for the international community at large and their citizenry. Failure to do so will be catastrophic.

¹ David Keanu Sai, *The American Occupation of the Hawaiian Kingdom: Beginning the Transition from Occupied to Restored State* (December 2008) (unpublished Ph.D. dissertation, University of Hawai'i at Manoa) (on file with the University of Hawai'i Hamilton Library), available at [http://www2.hawaii.edu/~anu/pdf/Dissertation\(Sai\).pdf](http://www2.hawaii.edu/~anu/pdf/Dissertation(Sai).pdf).

² DAVID KEANU SAI, *American Occupation of the Hawaiian State: A Century Unchecked*, 1 HAW. J. L. & POL. 46 (2004), available at [http://www2.hawaii.edu/~hslp/journal/vol1/Sai_Article_\(HJLP\).pdf](http://www2.hawaii.edu/~hslp/journal/vol1/Sai_Article_(HJLP).pdf); DAVID KEANU SAI, *A Slippery Path towards Hawaiian Indigeneity: An Analysis and Comparison between Hawaiian State Sovereignty and Hawaiian Indigeneity and its use and practice in Hawai'i today*, 10 J. L. & SOC. CHALLENGES 69 (Fall 2008), available at <http://www2.hawaii.edu/~anu/pdf/Indigeneity.pdf>.

³ DAVID KEANU SAI, *LARSEN CASE (LANCE LARSEN VS. HAWAIIAN KINGDOM)*, PERMANENT COURT OF ARBITRATION (2003); DAVID KEANU SAI, *UA MAU KE EA: SOVEREIGNTY ENDURES* (2011).

⁴ See Sai Dissertation, at 239

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⁵ Appendix I, available at http://hawaiiakingdom.org/pdf/Continuity_Brief.pdf.

⁶ Appendix II, available at http://hawaiiakingdom.org/pdf/Proc_Provisional_Laws.pdf.

⁷ Appendix III, available at http://hawaiiakingdom.org/pdf/Transcript_Molokai_hearing.pdf.

⁸ Appendix IV, available at

<http://ia600604.us.archive.org/17/items/programmeforpatr00hawa/programmeforpatr00hawa.pdf>.

⁹ Appendix V (German), available at

[http://hawaiiakingdom.org/pdf/Federal_Criminal_Court_28_April_2015_Deutsche_\(redacted\).pdf](http://hawaiiakingdom.org/pdf/Federal_Criminal_Court_28_April_2015_Deutsche_(redacted).pdf).

¹⁰ Appendix V (English), available at

[http://hawaiiakingdom.org/pdf/Federal_Criminal_Court_28_April_2015_English_\(redacted\).pdf](http://hawaiiakingdom.org/pdf/Federal_Criminal_Court_28_April_2015_English_(redacted).pdf).

INTRODUCTION

Customary international law, in particular the laws and customs of war on land, provides for the establishment of a Military Government during belligerent occupation of an independent and sovereign state. The failure of the United States to establish a Military Government since the prolonged occupation of the Hawaiian Kingdom began during the Spanish-American War has led to unimaginable violations of international law and human rights, called international humanitarian law, that has profound ramifications not only for Hawai'i, but for the world at large.

The prolonged occupation of a friendly and neutral state, during war for military interest, is unparalleled and unprecedented. Military interest and necessity would apply solely to belligerent states and not to neutral states, whose neutrality was critical to the balance of power amongst the members of the family of nations. Hawai'i ensured its place as a neutral state throughout the nineteenth century. The closest parallel to Hawai'i's situation would not take place until sixteen years later when the Germans occupied the neutral state of Luxemburg prior to the breakout of World War I in 1914. Germany justified this occupation as a matter of military necessity, claiming that France had made overtures of occupying Luxemburg in order to launch attacks against Germany. Although Germany's claims were unfounded, it did not seek to unilaterally seize Luxemburg's sovereignty, but allowed Luxemburg's government to continue until the occupation ended in 1918. In World War II, however, Germany did attempt to unilaterally seize the neutral state of Luxemburg after Germany had occupied it, and the perpetrators were prosecuted for war crimes after the war.

FIRST ARMED CONFLICT: UNITED STATES INTERVENTION

In 2001, the Permanent Court of Arbitration acknowledged that, "in the nineteenth century the Hawaiian Kingdom existed as an independent State recognized as such by the United States of America, the United Kingdom and various other States, including by exchanges of diplomatic or consular representatives and the conclusion of treaties."¹² As an independent state, the Hawaiian Kingdom was a subject of international law, which prohibited intervention in its domestic affairs by other states. According to Brownlie,

"The principal corollaries of the sovereignty and equality of states are: (1) a jurisdiction, prima facie exclusive, over a territory and the permanent population living there; (2) a duty of non-intervention in the area of exclusive jurisdiction of other states; and (3) the dependence of obligations arising from customary law and treaties on the consent of the obligor."¹³

¹¹ Appendix VI, available at http://www.loc.gov/rr/frd/Military_Law/pdf/FM-27-5-1947.pdf.

¹² *Larsen v. Hawaiian Kingdom*, 119 INT'L L. REP. 566, 581 (2001).

¹³ IAN BROWNLIE, PRINCIPLES OF PUBLIC INTERNATIONAL LAW 287 (4th ed. 1990).

Should a state seek to merge into another state, international law only allows it through cession. “Cession of State territory is the transfer of sovereignty over State territory by the owner-State to another State,”¹⁴ says Oppenheim. “The only form in which a cession can be effected is an agreement embodied in a treaty between the ceding and the acquiring State. Such treaty may be the outcome of peaceable negotiations or of war.”¹⁵ Through peaceful negotiations, the United States acquired by treaty, the former territories of the French in Louisiana in 1803,¹⁶ the Spanish in Florida in 1819,¹⁷ the British in Oregon in 1846,¹⁸ the Russian in Alaska in 1867,¹⁹ and the Danish in the Virgin Islands in 1916.²⁰ The United States acquired, through treaties of conquest, the former territories of the British in the Americas in 1783,²¹ the Mexicans in territory north of the Rio Grande in 1848, which includes Texas,²² and the Spanish in the Philippines, Guam and Puerto Rico in 1898.²³ Hawai‘i is the only territory the United States claims without a treaty.

International law also distinguishes between the state and its government, where the latter is the physical manifestation that exercises the sovereignty of the former. Hoffman emphasizes that a government “is not a State any more than man’s words are the man himself,” but “is simply an expression of the State, an agent for putting into execution the will of the State.”²⁴ Wright also concluded, “international law distinguishes between a government and the state it governs.”²⁵ Therefore, a sovereign State would continue to exist despite its government being overthrown by military force. “There is a presumption that the State continues to exist, with its rights and obligations...despite a period in which there is no, or no effective, government,” explains Crawford. “Belligerent occupation does not affect the continuity of the State, even where there exists no government claiming to represent the occupied State.”²⁶ Crawford states,

“The occupation of Iraq in 2003 illustrated the difference between ‘government’ and ‘State’; when Members of the Security Council, after adopting SC res. 1511, 16 October 2003, called for the rapid ‘restoration of Iraq’s sovereignty,’ they did not imply that Iraq had ceased to exist as a State but that normal governmental arrangements should be restored.”²⁷

The Hawaiian Kingdom Civil Code provides, “The laws are obligatory upon all persons, whether subjects of this kingdom, or citizens or subjects of any foreign State, while

¹⁴ L. OPPENHEIM, INTERNATIONAL LAW, vol. 1, 499 (7th ed. 1948).

¹⁵ *Id.*, at 500.

¹⁶ 8 U.S. Stat. 200; Treaty Series 86.

¹⁷ 8 U.S. Stat. 252; Treaty Series 327.

¹⁸ 9 U.S. Stat. 869; Treaty Series 120.

¹⁹ 15 U.S. Stat. 539; Treaty Series 301.

²⁰ 39 U.S. Stat. 1706; Treaty Series 629.

²¹ 8 U.S. Stat. 80; Treaty Series 104.

²² 9 U.S. Stat. 922; Treaty Series 207.

²³ 30 U.S. Stat. 1754; Treaty Series 343.

²⁴ FRANK SARGENT HOFFMAN, THE SPHERE OF THE STATE OR THE PEOPLE AS A BODY-POLITIC 19 (1894).

²⁵ QUINCY WRIGHT, *The Status of Germany and the Peace Proclamation*, 46(2) AM. J. INT’L L. 299, 307 (Apr. 1952).

²⁶ JAMES CRAWFORD, THE CREATION OF STATES IN INTERNATIONAL LAW 34 (2d ed. 2006).

²⁷ *Id.*

within the limits of this kingdom, except so far as exception is made by the laws of nations in respect to Ambassadors or others. The property of all such persons, while such property is within the territorial jurisdiction of this kingdom, is also subject to the laws.”²⁸ The Hawaiian Kingdom Penal Code defines treason “to be any plotting or attempt to dethrone or destroy the King, or the adhering to the enemies thereof, giving them aid and comfort, the same being done by a person owing allegiance to this kingdom.”²⁹ For any person committing the crime of treason “shall suffer the punishment of death; and all his property shall be confiscated to the government.”³⁰

On January 16, 1893, the United States intervened in the internal affairs of the kingdom when its diplomat—Minister John Stevens, ordered the landing of U.S. troops to actively participate in the treasonous take over of the Hawaiian government. The following day, U.S. troops forcibly removed the executive Monarch—Queen Lili’uokalani, and her Cabinet of four ministers, and replaced them with insurgents led by Hawai’i Supreme Court Judge Sanford Dole. The insurgents’ proclamation of January 17, 1893 stated:

“All officers under the existing Government are hereby requested to continue to exercise their functions and perform the duties of their respective offices, with the exception of the following named person: Queen Liliuokalani, Charles B. Wilson, Marshal, Samuel Parker, Minister of Foreign Affairs, W.H. Cornwell, Minister of Finance, John F. Colburn, Minister of the Interior, Arthur P. Peterson, Attorney-General, who are hereby removed from office. All Hawaiian Laws and Constitutional principles not inconsistent herewith shall continue in force until further order of the Executive and Advisory Councils.”³¹

Once the regime change was effected, all government officers and employees were forced to sign oaths of allegiance or face termination or arrest.³² This being done under the oversight of U.S. troops after Minister Stevens declared Hawai’i to be an American Protectorate on February 1, 1893. The purpose of the regime change was for the provisional government to cede, by treaty, Hawai’i’s sovereignty and territory to the United States.

One month after the treaty of annexation was signed in Washington, D.C., on February 14, 1893, under President Benjamin Harrison and submitted to the Senate for ratification, President Grover Cleveland, Harrison’s successor, withdrew the treaty and initiated an investigation into the overthrow of the Hawaiian Government. President Cleveland concluded that the provisional government was neither *de facto* nor *de jure*, but self-declared,³³ and the U.S. “military demonstration upon the soil of Honolulu was itself an

²⁸ Hawaiian Kingdom Civil Code, §6 (Compiled Laws 1884).

²⁹ Hawaiian Kingdom Penal Code, Chapter VI, sec. 1 (1869).

³⁰ *Id.*, at Sec. 9.

³¹ ROBERT C. LYDECKER, ROSTER LEGISLATURES OF HAWAII 188 (1918).

³² Oath of Allegiance to Provisional Government, available at http://hawaiiankingdom.org/blog/wp-content/uploads/2014/01/Oath_Provisional_Gov.jpg.

³³ United States House of Representatives, 53d Cong., Executive Documents on Affairs in Hawai’i: 1894-95, 453 (Government Printing Office 1895).

act of war.”³⁴ The President then notified the Congress that he began executive mediation with the Queen to reinstate her and her Cabinet of ministers on condition she would grant amnesty to the insurgents. The first of several meetings were held at the U.S. Legation in Honolulu on November 13, 1893.³⁵ An agreement was reached on December 18, 1893,³⁶ but President Cleveland was unable to get Congressional authorization for the use of force in order to redeploy the troops to Hawai'i. The agreement was not carried out. This executive agreement is recognized under international law as a treaty.³⁷

On July 4, 1894, the insurgency declared the Provisional Government to be the Republic of Hawai'i and continued to have government officers and employees sign oaths of allegiance under threat by American mercenaries who were employed by the insurgency.³⁸ The proclamation of the insurgents stated,

“it is hereby declared, enacted and proclaimed by the Executive and Advisory Councils of the Provisional Government and by the elected Delegates, constituting said Constitutional Convention, that on and after the Fourth day of July, A.D. 1894, the said Constitution shall be the Constitution of the Republic of Hawaii and the Supreme Law of the Hawaiian Islands.”³⁹

On June 17, 1897, the day after a second treaty of annexation was signed in Washington, D.C., under President William McKinley, Cleveland's successor; Queen Lili'uokalani submitted a formal protest to the U.S. State Department. Her protest stated,

“I declare such a treaty to be an act of wrong toward the native and part-native people of Hawaii, an invasion of the rights of the ruling chiefs, in violation of international rights both toward my people and toward friendly nations with whom they have made treaties, the perpetuation of the fraud whereby the constitutional government was overthrown, and, finally, an act of gross injustice to me.”⁴⁰

President McKinley ignored the protest and submitted the treaty to the Senate for ratification. Additional protests were filed with the Senate from the people, which included a 21,269 signature-petition of members and supporters of the Hawaiian Patriotic

³⁴ *Id.*, at 451.

³⁵ *Id.*, at 1241-43.

³⁶ *Id.*, at 1269-73.

³⁷ See *Dames & Moore v. Regan*, 453 U. S. 654, 679, 682-683 (1981); *United States v. Pink*, 315 U. S. 203, 223, 230 (1942); *United States v. Belmont*, 301 U. S. 324, 330-331 (1937); see also L. HENKIN, *FOREIGN AFFAIRS AND THE UNITED STATES CONSTITUTION* 219, 496, n. 163 (2d ed. 1996) (“Presidents from Washington to Clinton have made many thousands of agreements ... on matters running the gamut of U. S. foreign relations”).

³⁸ Oath of Allegiance to Republic of Hawai'i, available at http://hawaiiankingdom.org/blog/wp-content/uploads/2014/01/Oath_Republic.jpg. In a 1993 joint resolution apologizing for the illegal overthrow of the government of the Hawaiian Kingdom, the U.S. Congress acknowledged that the Republic of Hawai'i was self-declared. 107 U.S. Stat. 1510, 1512 (1993).

³⁹ See LYDECKER, at 225.

⁴⁰ Queen Lili'uokalani's Protest against Treaty of Annexation, June 17, 1897, available at <http://libweb.hawaii.edu/digicoll/annexation/protest/liliu5.html>.

League protesting the annexation of Hawai'i. By March of 1898, the treaty is dead after the Senate was unable to garner enough votes for ratification.

SECOND ARMED CONFLICT: UNITED STATES OCCUPATION

On May 4, 1898, Congressman Francis Newlands submitted a joint resolution for the annexing of the Hawaiian Islands to the U.S. House Committee on Foreign Affairs after Commodore Dewey defeated the Spanish fleet at Manila Bay, Philippines, on May 1. On May 17, the joint resolution was reported out of the committee without amendment and headed to the floor of the House of Representatives. The joint resolution's accompanying Report justified the congressional action to seize the Hawaiian Islands as a matter of military interest. The Report stated,

“The leading nations—England, France, Germany, Japan, Spain, and the United States—have each a Pacific Squadron. Every one of these squadrons is stronger than ours save that of Spain, which is the weakest. Had the war in which we are now engaged been with any of the other powers they might have worsted our fleet and seized the Hawaiian Islands, which are not now defended by any fortification or cannon, thus exactly reversing our recent good fortune at Manila. They would then have had a convenient base for supplies, coal, and repairs, from which to actively harry and devastate our coast. But were we in complete possession of the Hawaiian Islands and they properly prepared for defense (which eminent officers of the Army and Navy stated to the committee could be done at a cost of \$500,000), our fleet, even if pressed by a greatly superior sea power, would have an impregnable refuge at Pearl Harbor, backed by a friendly population and militia, with all the resources of the large city of Honolulu and a small but fruitful country. Holding this all important strategic point, the enemy could not remain in that part of the Pacific, thousands of miles from any base, without running out of coal sufficient to get back to their own possessions. The islands would secure both our fleet and our coast.”⁴¹

Despite objections by Senators and Representatives that foreign territory can only be acquired by treaty and not through a congressional statute, President McKinley signs the joint resolution into law on July 7, 1898, and the occupation of the Hawaiian Islands began on August 12. The war with Spain did not come to an end until April 11, 1899, after documents of ratifications of the Treaty of Paris were exchanged. Customary international law mandated the United States, as the occupying state, to establish a Military Government in order to provisionally administer the laws of the occupied state, being the laws of the Hawaiian Kingdom that stood prior to the regime change on January 17, 1893. Instead of establishing a Military Government, the U.S. authorities allowed the insurgents to maintain control until the Congress could reorganize the so-called Republic of Hawai'i.

⁴¹ House Committee on Foreign Affairs Report to accompany H. Res. 259, May 17, 1898, 2 (House Report no. 1355, 55th Congress, 2d session).

By statute, the U.S. Congress changed the name of the Republic of Hawai'i to the Territory of Hawai'i on April 30, 1900. The Territorial Act stated,

“The constitution and statute laws of the Republic of Hawaii then in force, set forth in a compilation made by Sidney M. Ballou under the authority of the legislature, and published in two volumes entitled ‘Civil Laws’ and ‘Penal Laws,’ respectively, and in the Session Laws of the Legislature for the session of eighteen hundred and ninety-eight, are referred to in this Act as ‘Civil Laws,’ ‘Penal Laws,’ and ‘Session Laws.’”⁴²

On March 18, 1959, the U.S. Congress again by statute changed the name of the Territory of Hawai'i to the State of Hawai'i. The Statehood Act stated,

“All Territorial laws in force in the Territory of Hawaii at the time of its admission into the Union shall continue in force in the State of Hawaii, except as modified or changed by this Act or by the constitution of the State, and shall be subject to repeal or amendment by the Legislature of the State of Hawaii.”⁴³

When the United States created the Territory of Hawai'i in 1900 it surpassed “its limits under international law through extraterritorial prescriptions emanating from its national institutions: the legislature, government, and courts.”⁴⁴ The purpose of this extraterritorial prescription was to conceal the occupation of the Hawaiian Kingdom and bypass the duty of administering the laws of the occupied state in accordance with the 1899 Hague Convention, II, which the United States had ratified. Article 43, provides:

“The authority of the legitimate power having actually passed into the hands of the occupant, the latter shall take all steps in his power to re-establish and insure, as far as possible, public order and safety, while respecting, unless absolutely prevented, the laws in force in the country.”

The 1899 Hague Convention, II, was superseded by the 1907 Hague Convention, IV, and the text of Article 43 was slightly altered to read,

“The authority of the legitimate power having in fact passed into the hands of the occupant, the latter shall take all the measures in his power to restore, and ensure, as far as possible, public order and safety, while respecting, unless absolutely prevented, the laws in force in the country.”

The United States creation of the State of Hawai'i in 1959, as the successor of the Territory of Hawai'i, not only stood in direct violation of Article 43, but also the duty of non-intervention in the internal affairs of another state.

⁴² 31 U.S. Stat. 141.

⁴³ 73 U.S. Stat. 4.

⁴⁴ EYAL BENVENISTI, *THE INTERNATIONAL LAW OF OCCUPATION* 19 (1993).

LIMITS OF U.S. CONGRESSIONAL LEGISLATION

Sources of international law are, in rank of precedence: international conventions, international custom, general principles of law recognized by civilized nations, and judicial decisions and the teachings of the most highly qualified publicists of the various nations.⁴⁵ The legislation of every state, to include the United States of America and its Congress, is not a source of international law, but rather a source of municipal law of the state whose legislature enacted it. In *The Lotus*, the International Court stated, “Now the first and foremost restriction imposed by international law upon a State is that—failing the existence of a permissive rule to the contrary—it may not exercise its power in any form in the territory of another State.”⁴⁶ According to Crawford, derogation of this principle will not be presumed, which he refers to as the *Lotus* presumption.⁴⁷

Since Congressional legislation, whether by a statute or a joint resolution, has no extraterritorial effect, it is not a source of international law, which “governs relations between independent States.”⁴⁸ The U.S. Supreme Court has always adhered to this principle. The U.S. Supreme Court stated,

“Neither the Constitution nor the laws passed in pursuance of it have any force in foreign territory unless in respect of our own citizens, and operations of the nation in such territory must be governed by treaties, international understandings and compacts, and the principles of international law.”⁴⁹

The Supreme Court also concluded, “The laws of no nation can justly extend beyond its own territories except so far as regards its own citizens. They can have no force to control the sovereignty or rights of any other nation within its own jurisdiction.”⁵⁰ Adhering to this principle, the U.S. Attorney General’s Office of Legal Counsel was befuddled by Congress’s annexation of the Hawaiian Islands by a joint resolution. In a 1988 legal opinion, the Office of Legal Counsel addressed the annexation of the Hawaiian Islands by joint resolution. Douglas Kmiec, Acting Assistant Attorney General, authored the memorandum for Abraham D. Sofaer, legal advisor to the U.S. State Department. After covering the limitation of Congressional authority and the objections made by members of the Congress, Kmiec concluded,

“Notwithstanding these constitutional objections, Congress approved the joint resolution and President McKinley signed the measure in 1898. Nevertheless, whether this action demonstrates the constitutional power of Congress to acquire territory is certainly questionable. ... It is therefore unclear which constitutional power Congress exercised when it acquired Hawaii by joint resolution. Accordingly, it is doubtful that the acquisition of Hawaii can serve as an

⁴⁵ Statute of the International Court of Justice, Article 38.

⁴⁶ *Lotus*, PCIJ, ser. A no. 10, 18 (1927).

⁴⁷ See CRAWFORD, at 41-42.

⁴⁸ See *Lotus*, at 18.

⁴⁹ *United States v. Curtiss Wright Export Corp.*, 299 U.S. 304, 318 (1936).

⁵⁰ *The Apollon*, 22 U.S. 362, 370 (1824).

appropriate precedent for a congressional assertion of sovereignty over an extended territorial sea.”⁵¹

This 1988 opinion clearly undermines the claim of sovereignty over the Hawaiian Islands by the United States. If the Attorney General’s Office of Legal Counsel is “unclear” as to the authority of Congress to annex the Hawaiian Islands, it surely cannot be considered as a valid demonstration of legal title by the United States as the successor to the Hawaiian Kingdom under international law. If the United States is not the successor, then the presumption of the Hawaiian Kingdom’s existence as an independent state is maintained.

CONTINUANCE OF INTERNATIONAL TREATIES

The first friendship treaty the Hawaiian Kingdom entered into as a sovereign state was with Denmark on October 19, 1846. Other friendship treaties followed with Hamburg, succeeded by Germany, (January 8, 1848), the United States of America (December 20, 1849), the United Kingdom (July 10, 1851), Bremen, succeeded by Germany, (March 27, 1854), Sweden-Norway, now separate states, (April 5, 1855), France (September 8, 1858), Belgium (October 4, 1862), Netherlands (October 16, 1862), Luxembourg (October 16, 1862), Italy (July 22, 1863), Spain (October 9, 1863), Switzerland (July 20, 1864), Russia (June 19, 1869), Japan (August 19, 1871), Austria-Hungary, now separate states (June 18, 1875), Germany (March 25, 1879), and Portugal (May 5, 1882). Neither the Hawaiian Kingdom nor any of these states expressed any intention to terminate any of the treaties according to the provisions provided in each of the treaties, and therefore remain in full force and effect.

These treaties have the “most favored nation” clause, and secure the equal application of commercial trade in the Hawaiian Islands to all treaty partners. These treaties have all been violated by the United States through the unlawful imposition of the *Merchant Marine Act* (1920)—also known as the *Jones Act*—that has secured commercial control over the seas to United States citizens, which has consequently placed the citizens of these foreign states at a commercial disadvantage.⁵² The clause is designed

“to establish the principle of equality of international treatment. The test of whether the principle is violated by the concession of advantages to a particular nation is not the form in which such concession is made, but the condition on which it is granted; whether it is given for a price, or whether this price is in the nature of a substantial equivalent, and not a mere evasion.”⁵³

Treaties “are legally binding, because there exists a customary rule of International Law that treaties are binding. The binding effect of that rule rests in the last resort on the fundamental assumption, which is neither consensual nor necessarily legal, of the

⁵¹ DOUGLAS W. KMIK, *Legal Issues Raised by Proposed Presidential Proclamation To Extend the Territorial Sea*, 12 OPINIONS OF THE OFFICE OF LEGAL COUNSEL 238, 252 (1988).

⁵² 46 U.S.C. §883-1.

⁵³ BLACK’S LAW DICTIONARY 1013 (6th ed. 1990).

objectively binding force of International Law,”⁵⁴ states Oppenheim. “No distinction should be made between more or less important parts of a treaty as regards its execution. Whatever may be the importance or the insignificance of a part of a treaty, it must be executed in good faith, for the binding force of a treaty covers all its parts and stipulations equally.”⁵⁵

STATE OF HAWAI‘I UNDER INTERNATIONAL LAW

While the State of Hawai‘i cannot claim to be a government *de jure* or *de facto*, customary international law defines the organization as an Armed Force for the occupying state. Military manuals define Armed Forces as “organized armed groups which are under a command responsible to that party for the conduct of its subordinates.”⁵⁶ According to Henckaerts and Doswald-Beck, “this definition of armed forces covers all persons who fight on behalf of a party to a conflict and who subordinate themselves to its command,”⁵⁷ and that this “definition of armed forces builds upon earlier definitions contained in the Hague Regulations and the Third Geneva Convention which sought to determine who are combatants entitled to prisoner-of-war status.”⁵⁸ Article 1 of the 1907 Hague Convention, IV, provides that

“The laws, rights, and duties of war apply not only to armies, but also to militia and volunteer corps fulfilling the following conditions: (1) To be commanded by a person responsible for his subordinates; (2) To have a fixed distinctive emblem recognizable at a distance; (3) To carry arms openly; and (4) To conduct their operations in accordance with the laws and customs of war.”

The laws and customs of war during occupation applies only to territories that come under the authority of either the occupier’s military or an occupier’s Armed Force, such as the State of Hawai‘i, and that the “occupation extends only to the territory where such authority has been established and can be exercised.”⁵⁹ According to Ferraro, “occupation—as a species of international armed conflict—must be determined solely on the basis of the prevailing facts.”⁶⁰ Although unlawful, it is a fact that the United States created the State of Hawai‘i through congressional action and signed into law by its President, Dwight D. Eisenhower, in 1959. It is also a fact that the United States approved the constitution of the State of Hawai‘i that provides for its organizational structure.

⁵⁴ See OPPENHEIM, at 794.

⁵⁵ *Id.*, 829.

⁵⁶ JEAN-MARIE HENCKAERTS AND LOUISE DOSWALD-BECK, CUSTOMARY INTERNATIONAL HUMANITARIAN LAW, vol. I, 14 (2009).

⁵⁷ *Id.*, at 15.

⁵⁸ *Id.*

⁵⁹ 1907 Hague Convention, IV, Article 42.

⁶⁰ TRISTAN FERRARO, *Determining the beginning and end of an occupation under international humanitarian law*, 94 (no. 885) INT’L REV RED CROSS 133, 134 (Spring 2012).

As an Armed Force, the State of Hawai'i established its authority over 137 islands,⁶¹ “together with their appurtenant reefs and territorial and archipelagic waters.”⁶² These islands include the major islands of Hawai'i, Maui, O'ahu, Kaua'i, Molokai, Lana'i, Ni'ihau, and Kaho'olawe. It is the effectiveness of the control exercised by the State of Hawai'i over this territory, as an Armed Force for the United States, which triggers the application of occupation law.

Allegiance to the United States

The State of Hawai'i, as an Armed Force, bears its allegiance to the United States where its public officers, to include its Governor, take the following oath of office: “I do solemnly swear (or affirm) that I will support and defend the Constitution of the United States, and the Constitution of the State of Hawaii, and that I will faithfully discharge my duties as [...] to best of my ability.”⁶³

Commanded by a Person Responsible for His Subordinates

A Governor who is elected by U.S. citizens in Hawai'i is head of the State of Hawai'i. The Governor is responsible for the execution of its laws from its legislature and to carry out the decisions by its courts. The Governor is also the “commander in chief of the armed forces of the State and may call out such forces to execute the laws, suppress or prevent insurrection or lawless violence or repel invasion.”⁶⁴ The Governor's subordinates include all “executive and administrative offices, departments and instrumentalities of the state government.”⁶⁵

Fixed Distinctive Emblem Recognizable at a Distance

According to its constitution, “The Hawaiian flag shall be the flag of the State.”⁶⁶

Carry Arms Openly

Law enforcement officers of the State of Hawai'i, to include the Sheriff's Division, Department of Land and Natural Resources, and the police of the State's four Counties, all openly carry arms. Also included are the State of Hawai'i's Army National Guard and Air National Guard who openly carry arms while in tactical training.

⁶¹ “Hawai'i Facts and Figures” (December 2014), State of Hawai'i Department of Business, Economic Development & Tourism.

⁶² State of Hawai'i Constitution, Article XV, section 1, available at <http://lrbhawaii.org/con/>.

⁶³ *Id.*, Article XVI, sec. 4.

⁶⁴ *Id.*, Article V, sec. 5.

⁶⁵ *Id.*, sec. 6.

⁶⁶ *Id.*, Article XV, sec. 3.

Conduct Operations in Accordance with the Laws and Customs of War

As the Governor is the commander in chief of the State's Armed Forces, and is responsible for the suppression or prevention of insurrection or lawless violence, as well as repelling an invasion, the State of Hawai'i is capable of conducting operations in accordance with the laws and customs of war during occupation.

ACTING GOVERNMENT OF THE HAWAIIAN KINGDOM

In 1996, remedial steps were taken under the doctrine of necessity to reinstate the Hawaiian Kingdom government as it was under our late Queen Lili'uokalani on January 17, 1893.⁶⁷ An *acting* Council of Regency was established in accordance with the Hawaiian Constitution and the doctrine of necessity to serve in the absence of the executive monarch. By virtue of this process an *acting* Government comprised of *de facto* officers was established and has since received diplomatic recognition.⁶⁸

From 1999-2001, the *acting* Government represented the Hawaiian Kingdom in international arbitration proceedings, *Larsen vs. Hawaiian Kingdom*, at the Permanent Court of Arbitration (PCA), The Hague, Netherlands.⁶⁹ In its commentary on international decisions in the *American Journal of International Law*, Bederman and Hilbert state,

“At the center of the PCA proceeding was the argument that Hawaiians never directly relinquished to the United States their claim of inherent sovereignty either as a people or over their national lands, and accordingly that the Hawaiian Kingdom continues to exist and that the Hawaiian Council of Regency (representing the Hawaiian Kingdom) is legally responsible under international law for the protection of Hawaiian subjects, including the claimant. In other words, the Hawaiian Kingdom was legally obligated to protect Larsen from the United States’ ‘unlawful imposition [over him] of [its] municipal laws’ through its political subdivision, the State of Hawaii. As a result of this responsibility,

⁶⁷ David Keanu Sai, *Brief—The Continuity of the Hawaiian State and the Legitimacy of the acting Government of the Hawaiian Kingdom*, 25-51 (August 4, 2013), available at http://hawaiiankingdom.org/pdf/Continuity_Brief.pdf. Appendix I.

⁶⁸ *Id.*, at 40-48. On April 3, 2014, the Directorate of International Law, Swiss Federal Department of Foreign Affairs, in Bern, accepted the *acting* Government's letter of credence for its Envoy whose mission was to initiate negotiations with the Swiss Confederation to serve as a Protecting Power in accordance with the 1949 Geneva Convention, IV. The negotiations are ongoing.

⁶⁹ The author served as lead agent for the *acting* Government in these arbitral proceedings. For law-reviewed articles on the Hawaiian arbitration, see BEDERMAN & HILBERT, *Arbitration—UNCITRAL Rules—justiciability and indispensable third parties—legal status of Hawai'i*, 95 AM. J. INT'L L. 927, 928 (2001); see also DAVID KEANU SAI, *American Occupation of the Hawaiian State: A Century Unchecked*, 1 HAW. J. L. & POL. 46 (Summer 2004); and PATRICK DUMBERRY, *The Hawaiian Kingdom Arbitration Case and the Unsettled Question of the Hawaiian Kingdom's Claim to Continue as an Independent State under International Law*, 2(1) CHINESE J. INT'L L. 655, 682 (2002).

Larsen submitted, the Hawaiian Council of Regency should be liable for any international law violations that the United States committed against him.”⁷⁰

After oral hearings were held at the Permanent Court of Arbitration on December 7, 8 and 11, the *acting* Government was called to a meeting in Brussels, Belgium, by His Excellency Dr. Jacques Bihozagara, Ambassador for the Republic of Rwanda assigned to Belgium. Ambassador Bihozagara was at the International Court of Justice where he was made aware of the Hawaiian Kingdom arbitration. At this meeting in Brussels on December 12, Ambassador Bihozagara conveyed to the *acting* Government that his government was prepared to bring to the attention of the United Nations General Assembly the prolonged occupation of the Hawaiian Kingdom.

“Recalling his country’s experience of genocide and the length of time it took for the international community to finally intervene as a matter of international law, Ambassador Bihozagara conveyed to the author that the illegal and prolonged occupation of Hawai‘i was unacceptable and should not be allowed to continue. Despite the excitement of the offer, apprehension soon took hold and the acting government could not, in good conscience, accept the offer and put Rwanda in a position of reintroducing Hawai‘i’s State continuity before the United Nations, when Hawai‘i’s community, itself, remained ignorant of Hawai‘i’s profound legal position. The author thanked Ambassador Bihozagara for his government’s offer, but the timing was premature. The author conveyed to the ambassador that the gracious offer could not be accepted without placing Rwanda in a vulnerable position of possible political retaliation by the United States, but that the acting government should instead focus its attention on continued exposure of the occupation both at the national and international levels.”⁷¹

What faced the *acting* Government was the prolonged nature of the occupation, together with the United States violation of the laws and customs of war during occupation, its devastating effect on Hawai‘i’s political economy, and the violation of international humanitarian law. The exigency of the situation is what prompted the *acting* Government to exercise its legislative authority as a matter of necessity. On October 10, 2014, the *acting* Council of Regency decreed, by Proclamation, provisional laws for the Kingdom, subject to ratification by the Legislative Assembly when called into session, in order to provide for the proper legal foundation for the administration of Hawaiian Kingdom laws in compliance with the law and customs of war during occupation. The Proclamation decreed,

“that from the date of this proclamation all laws that have emanated from an unlawful legislature since the insurrection began on July 6, 1887 to the present, to include United States legislation, shall be the provisional laws of the Realm subject to ratification by the Legislative Assembly of the Hawaiian Kingdom once assembled, with the express proviso that these provisional laws do not run contrary to the express, reason and spirit of the laws of the Hawaiian Kingdom prior to July 6, 1887, the international laws of occupation and international

⁷⁰ See BEDERMAN & HILBERT, at 928.

⁷¹ See SAI, *Slippery Path*, at 131.

humanitarian law, and if it be the case they shall be regarded as invalid and void.”⁷²

The Proclamation also called upon

“all persons, whether subjects of this kingdom, or citizens or subjects of any foreign State, while within the limits of this kingdom, to obey promptly and fully, in letter and in spirit, such proclamations, rules, regulations and orders, as the military government may issue during the present military occupation of the Hawaiian Kingdom so long as these proclamations, rules, regulations and orders are in compliance with the laws and provisional laws of the Hawaiian Kingdom, the international laws of occupation and international humanitarian law.”⁷³

Although, Hawaiian law prohibits the enactment of retrospective laws,⁷⁴ the doctrine of necessity would allow for it in extraordinary circumstances. Necessity is where the “power of a Head of State under a written Constitution extends by implication to executive acts, and also legislative acts taken temporarily (that is, until confirmed, varied or disallowed by the lawful Legislature) to preserve or restore the Constitution, even though the Constitution itself contains no express warrant for them.”⁷⁵ Deviations from a State’s constitutional order “can be justified on grounds of necessity,”⁷⁶ states de Smith. “State necessity has been judicially accepted in recent years as a legal justification for ostensibly unconstitutional action to fill a vacuum arising within the constitutional order [and to] this extent it has been recognized as an implied exception to the letter of the constitution.”⁷⁷ Lord Pearce also states that there are certain limitations to the principle of necessity,

“namely (a) so far as they are directed to and reasonably required for ordinary orderly running of the State, and (b) so far as they do not impair the rights of citizens under the lawful...Constitution, and (c) so far as they are not intended to and do not run contrary to the policy of the lawful sovereign.”⁷⁸

According to Sassòli, “The expression ‘laws in force in the country’ in Article 43 refers not only to laws in the strict sense of the word, but also to the constitution, decrees, ordinances, court precedents (especially in territories of common law tradition), as well as administrative regulations and executive orders, provided that the ‘norms’ in question are general and abstract.”⁷⁹ The Proclamation is a part of the “laws in force in the country”

⁷² Proclamation (October 10, 2014), available at http://hawaiiakingdom.org/pdf/Proc_Provisional_Laws.pdf. Appendix II.

⁷³ *Id.*

⁷⁴ Hawaiian Kingdom Constitution (1864), Article 16—“No Retrospective Laws shall ever be enacted;” see also Hawaiian Kingdom Civil Code, §5—“No law shall have any retrospective operation.”

⁷⁵ F.M. BROOKEFIELD, *The Fiji Revolutions of 1987*, NEW ZEALAND L. J. 250, 251 (July 1988).

⁷⁶ STANLEY A. DE SMITH, *CONSTITUTIONAL AND ADMINISTRATIVE LAW* 80 (1986).

⁷⁷ *Id.*

⁷⁸ *Madzimbamuto v. Lardner-Burke*, 1 A.C. 645, 732 (1969).

⁷⁹ Marco Sassòli, *Article 43 of the Hague Regulations and Peace Operations in the Twenty-first Century*, 6 (Background Paper prepared for Informal High-Level Expert Meeting on Current Challenges to International Humanitarian Law, Cambridge, June 25-27, 2004).

as a “decree” of the *acting* Government that must be administered in accordance with Article 43.

At an evidentiary hearing held on March 5, 2015, where the Court received the author as an expert in international law, the Court took judicial notice of the brief titled, “*The Continuity of the Hawaiian State and the Legitimacy of the acting Government of the Hawaiian Kingdom.*”⁸⁰ According to the State of Hawai‘i Rules of Evidence, Rule 201(b)(2), a “judicially noticed fact must be one not subject to reasonable dispute in that it is...capable of accurate and ready determination by resort to sources whose accuracy cannot reasonably be questioned.” When the trial court took judicial notice of the brief it not only recognized the continuity of the Hawaiian Kingdom to be true, but it also recognized the establishment of the *acting* government to be true. The State of Hawai‘i cannot claim otherwise, unless it can show that the evidentiary hearing was unfair and did not allow the Prosecutor to object to the judicial notice, which was not the case.

DENATIONALIZATION THROUGH AMERICANIZATION

In 1906 began the intentional and methodical plan of *Americanization* intended to not only conceal the violation of Hawai‘i’s sovereignty and the international law of occupation, but to obliterate the national consciousness of the Hawaiian Kingdom in the minds of the children who were attending the public and private schools throughout the islands. This program was developed by the Territory of Hawai‘i’s Department of Public Instruction and called “Programme for Patriotic Exercises in the Public Schools.” The purpose of the program was to inculcate American patriotism in the minds of the children and forced them to speak English and not Hawaiian.

According to the Programme, “The teacher will call one of the pupils to come forward and stand at one side of the desk while the teacher stands at the other. The pupil shall hold an American flag in military style. At second signal all children shall rise, stand erect and salute the flag, concluding with the salutation, ‘We give our heads and our hearts to God and our Country! One Country! One Language! One flag!’”⁸¹ In 1907, Harper’s Weekly magazine covered the *Americanization* taking place at Ka‘ahumanu and Ka‘iulani Public Schools.⁸² Below is a photo taken by the reporter of Harper’s Weekly at Ka‘iulani Public School.

⁸⁰ Transcript of Proceedings, State of Hawai‘i vs. Kaiula Kalawe English, criminal no. 14-1-0819, State of Hawai‘i vs. Robin Wainuhea Dudoit, criminal no. 14-1-0820, Circuit Court of the Second Circuit, State of Hawai‘i (Mar. 5, 2015), available at http://hawaiiankingdom.org/pdf/Transcript_Molokai_hearing.pdf. Appendix III.

⁸¹ Territory of Hawai‘i, Programme for Patriotic Exercises (1906), 4, available at <http://ia600604.us.archive.org/17/items/programmeforpatr00hawa/programmeforpatr00hawa.pdf>. Appendix IV.

⁸² William Inglis, *Hawaii’s Lesson to Headstrong California*, HARPER’S WEEKLY, Feb. 16, 1907, at 228.



Under customary international law, *Americanization* is a war crime of attempting to denationalize the inhabitants of an occupied territory. Germans and Italians were prosecuted for the same war crime after World War II for implementing a systematic plan of *Germanization* and *Italianization* in occupied territories. According to the Nuremberg Indictment of Nazis,

"In certain occupied territories purportedly annexed to Germany the defendants methodically and pursuant to plan endeavored to assimilate those territories politically, culturally, socially, and economically into the German Reich. The defendants endeavored to obliterate the former national character of these territories. In pursuance of these plans and endeavors, the defendants forcibly deported inhabitants who were predominantly non-German and introduced thousands of German colonists. This plan included economic domination, physical conquest, installation of puppet governments, purported de jure annexation and enforced conscription into the German Armed Forces. This was carried out in most of the occupied countries including: Norway, France, Luxembourg, the Soviet Union, Denmark, Belgium, and Holland."⁸³

Since the Programme began, *Americanization* had become so pervasive and institutionalized throughout Hawai'i, that the national consciousness of the Hawaiian Kingdom was nearly obliterated, but for the institutional recovery of the Hawaiian language and the resurrection of diligent historical research that has begun to uncover the true status of the Hawaiian Kingdom as an independent state under an illegal and prolonged occupation. This revelation is reconnecting Hawai'i to the international community and its treaty partners regarding the violations of rights and war crimes committed against the citizens and subjects of foreign states who have visited, resided or have done business in the Hawaiian Islands.

⁸³ Nuremberg Trial Proceedings, Indictment, Count 3, Article VIII (J), available at <http://avalon.law.yale.edu/imt/count3.asp>.

WAR CRIMES COMMITTED WITH IMPUNITY

Since the 1949 Geneva Conventions, the expression “armed conflict” substituted the term “war” in order for the Conventions to apply “to all cases of partial or total occupation of the territory of a High Contracting Party, even if the said occupation meets with no armed resistance (Common Article 2).” According to the International Committee of the Red Cross (ICRC) Commentary of Geneva Convention, IV, this wording of Article 2 “was based on the experience of the Second World War, which saw territories occupied without hostilities, the Government of the occupied country considering that armed resistance was useless. In such cases the interests of protected persons are, of course, just as deserving of protection as when the occupation is carried out by force.”⁸⁴

Casey-Maslen, editor of the War Report, states an international armed conflict exists “whenever one state uses any form of armed force against another, irrespective of whether the latter state fights back,” which “includes the situation in which one state invades another and occupies it, even if there is no armed resistance.”⁸⁵ The ICRC Commentary further clarifies that “Any difference arising between two States and leading to the intervention of members of the armed forces is an armed conflict within the meaning of Article 2, even if one of the Parties denies the existence of a state of war. It makes no difference how long the conflict lasts, or how much slaughter takes place. The respect due to the human person as such is not measured by the number of victims.”⁸⁶

The International Criminal Court defines war crimes as “serious violations of the laws and customs applicable in international armed conflict.”⁸⁷ United States Army Field Manual 27-10 expands the definition of a war crime, which is applied in armed conflicts that involve United States troops, to be “the technical expression for a violation of the law of war by any person or persons, military or civilian. Every violation of the law of war is a war crime.”⁸⁸ War crimes include deliberate acts as well as omissions, which the latter includes the failure to administer the laws of the occupied state (Article 43, 1907 Hague Convention, IV) and failure to provide a fair and regular trial (Article 147, Geneva Convention, IV).

International case law indicates that there must be a mental element of intent for the prosecution of war crimes, whereby war crimes must be committed willfully, either intentionally—*dolus directus*, or recklessly—*dolus eventualis*. According to Article 30(1) of the Rome Statute, the defendant is “criminally responsible and liable for punishment...only if the material elements [of the war crime] are committed with intent and knowledge.” Therefore, in order to prosecute there must be a mental element that includes a volitional component (intent) as well as a cognitive component (knowledge). Article 30(2) further clarifies that “a person has intent where: (a) In relation to conduct,

⁸⁴ JEAN S. PICTET, COMMENTARY ON THE IV GENEVA CONVENTION, RELATIVE TO THE PROTECTION OF CIVILIAN PERSONS IN TIME OF WAR 21 (1958).

⁸⁵ STUART CASEY-MASLEN, WAR REPORT 2012 7 (2013).

⁸⁶ See PICTET, at 20.

⁸⁷ International Criminal Court, *Elements of a War Crime*, Article 8(2)(b).

⁸⁸ U.S. Army Field Manual 27-10, sec. 499 (July 1956).

that person means to engage in the conduct; [and] (b) In relation to a consequence, that person means to cause that consequence or is aware that it will occur in the ordinary course of events.” Furthermore, the International Criminal Court’s *Elements of a War Crime*, states that there is no requirement for a legal evaluation to be done by the perpetrator.⁸⁹

Is there a particular time or event that could serve as a definitive point of knowledge for purposes of prosecution? In other words, where can there be “awareness that a circumstance exists or a consequence will occur in the ordinary course of events” stemming from the illegality of the overthrow of the Hawaiian Kingdom government on January 17, 1893? For the United States government that definitive point would be December 18, 1893, when President Cleveland notified the Congress of the illegality of the overthrow of the Hawaiian Kingdom government and called the landing of U.S. troops an act of war. For the private sector, however, it is the opinion of the author of this report, that the United States’ 1993 apology for the illegal overthrow of the Hawaiian Kingdom government, would serve as that definitive point of knowledge for those who are not in the service of government. In the form of a Congressional joint resolution enacted into United States law, the law specifically states that the Congress “on the occasion of the 100th anniversary of the illegal overthrow of the Kingdom of Hawai‘i on January 17, 1893 acknowledges the historical significance of this event.”⁹⁰ Additionally, the Congress also urged “the President of the United States to also acknowledge the ramifications of the overthrow of the Kingdom of Hawai‘i.”⁹¹

Despite the mistake of facts and law riddled throughout the apology resolution, it nevertheless serves as a specific point of knowledge and the ramifications that stem from that knowledge. Evidence that the United States knew of the ramifications was clearly displayed in the apology law’s disclaimer, “Nothing in this Joint Resolution is intended to serve as a settlement of any claims against the United States.”⁹² It is a presumption that everyone knows the law, which stems from the legal maxim *ignorantia legis neminem excusat* (ignorance of the law excuses no one). Unlike the United States government, being a public body, the State of Hawai‘i government cannot claim to be a government at all, and therefore is merely a private organization. Therefore, awareness and knowledge for members of the State of Hawai‘i would have begun with the enactment of the Apology resolution in 1993.

In *State of Hawai‘i v. Lorenzo* (1994),⁹³ the State of Hawai‘i Intermediate Court of Appeals considered an appeal by a defendant that argued the courts in the State of Hawai‘i have no jurisdiction as a direct result of the illegal overthrow of the government of the Hawaiian Kingdom. The basis of the appeal stemmed from the lower court’s ruling, “Although the Court respects Defendant’s freedom of thought and expression to believe that jurisdiction over the Defendant for the criminal offenses in the instant case should be

⁸⁹ See ICC Elements of a War Crime, Article 8.

⁹⁰ See Apology Resolution, at 1513.

⁹¹ *Id.*

⁹² *Id.*, at 1514.

⁹³ *State of Hawai‘i v. Lorenzo*, 77 Haw. 219 (1994).

with a sovereign, Native Hawaiian entity, like the Kingdom of Hawaii, such an entity does not preempt nor preclude jurisdiction of this court over the above-entitled matter.”⁹⁴ After acknowledging that the “United States Government recently recognized the illegality of the overthrow of the Kingdom and the role of the United States in that event,”⁹⁵ the appellate court denied the appeal.

The appellate court reasoned, the “essence of the lower court’s decision is that even if, as Lorenzo contends, the 1893 overthrow of the Kingdom was illegal, that would not affect the court’s jurisdiction in this case.”⁹⁶ The Court, however, admitted its “rationale is open to question in light of international law.”⁹⁷ The Court also admitted, “The illegal overthrow leaves open the question whether the present governance should be recognized.”⁹⁸ Although the courts of the State of Hawai‘i are not properly constituted, because it is an Armed Force and not a government, this clearly confirms awareness by the State of Hawai‘i.

In light of both the lower and appellate courts’ ignorance of international law and the presumption of continuity of an established state despite the illegal overthrow of its government, it clearly presents a case of applying the wrong law. According to the International Criminal Court’s elements of crimes, there “is no requirement for a legal evaluation by the perpetrator,” but “only a requirement of awareness.”⁹⁹ The *Lorenzo case* has become the seminal case used to quash all claims by defendants that the courts in the State of Hawai‘i are not properly constituted. There can be no doubt that the decisions made by each of the judges confronted with this defense has ruled against the defendants with full awareness since the Apology resolution in 1993 and the *Lorenzo case* in 1994.

War crimes that have and continue to be committed in the Hawaiian Islands include, but are not limited to: *pillaging* (Article 47, Hague Convention, IV, and Article 33, Geneva Convention, IV); *destroying public property belonging to the occupied State* (Article 55, Hague Convention, IV, and Article 147 Geneva Convention, IV); *denationalization in the public schools* (Article 56, Hague Convention, IV); *extensive appropriation of property, not justified by military necessity and carried out unlawfully and wantonly* (Article 147, Geneva Convention, IV); *depriving individuals of a fair and regular trial* (Article 147, Geneva Convention, IV); and *unlawful deportation or transfer or unlawful confinement* (Article 147, Geneva Convention, IV).

This is a human rights crisis of unimaginable proportions. Here follows some of the most serious war crimes that will have a paralyzing effect on the State of Hawai‘i as an Armed Force.

⁹⁴ *Id.*, at 220.

⁹⁵ *Id.*, at 221.

⁹⁶ *Id.*, at 220.

⁹⁷ *Id.*, at 220-221.

⁹⁸ *Id.*, at 221, n. 2.

⁹⁹ See ICC Elements of Crimes, Article 8 – Introduction.

War Crime—Pillaging through Taxation

Articles 46-54 of Hague Convention, IV, contain the rules governing the treatment of both personal and real property belonging to inhabitants of the occupied territory. Under Article 47, “pillage is formally forbidden.” In light of the “absolute character of the rule and of its obvious purpose to prevent plundering by any individual, the rule of the article would seem to extend to plundering by any national of the occupant, and generally any person subject to its local jurisdiction, including inhabitants as well as civilian officials of the occupant.”¹⁰⁰ The State of Hawai‘i’s officials and members, being the occupant state’s Armed Force and not a Military Government, must not plunder for the private use and purpose of maintaining the organization.

The State of Hawai‘i is an Armed Force comprised of private individuals under the guise of being a *de jure* government. Consequently, the compulsory collection of what it calls taxes, is in fact not taxes at all, but rather revenues derived through pillaging. Pillage or plunder is “the forcible taking of private property,”¹⁰¹ which, according to the Elements of Crimes of the International Criminal Court, must be seized “for private or personal use.”¹⁰² As such, the prohibition of pillaging or plundering is a specific application of the general principle of law prohibiting theft.¹⁰³

Currently the State of Hawai‘i, to include the Counties, derives their revenues through the collection of 14 taxes by the State of Hawai‘i (income tax, estate and transfer tax, general excise tax, transient accommodation tax, use tax, public service company tax, banks and other financial corporations franchise tax, fuel tax, liquor tax, cigarette and tobacco tax, conveyance tax, rental motor vehicle and tour vehicle surcharge tax, unemployment insurance tax, and insurance premiums tax), and 3 taxes by the Counties (real property tax, motor vehicle weight tax, and public utility franchise tax). The State of Hawai‘i’s primary revenue is the general excise tax, followed by the individual income tax. In 2014, the State of Hawai‘i and the Counties collected \$6.58 billion in taxes. Of all the war crimes, pillaging through taxation has not only affected the inhabitants of the islands, but also the international community that have traveled through the islands or have been engaged in commercial activities in the islands.

The authority to levy taxes is a fiscal and property right of an independent and sovereign state. Taxes constitute a portion of the property of the State and consist of obligatory contributions, which the States is authorized to levy upon individuals and corporations in order to provide necessary services of the State. The state’s government freely exercises this right as long as it is in conformity with its public law. The public law of the Hawaiian Kingdom provides a list of obligatory contributions, which along with taxes,¹⁰⁴

¹⁰⁰ ERNST H. FEILCHENFELD, THE INTERNATIONAL ECONOMIC LAW OF BELLIGERENT OCCUPATION 30 (1958).

¹⁰¹ See BLACK’S LAW, at 1148.

¹⁰² Elements of Crimes, International Criminal Court, Pillage as a war crime (ICC Statute, Article 8(2)(b)(xvi) and (e)(v)).

¹⁰³ See HENCKAERTS AND DOSWALD-BECK, at 185.

¹⁰⁴ See Hawaiian Civil Code, at 117-136.

includes customs and duties on foreign trade,¹⁰⁵ health insurance for visiting tourists,¹⁰⁶ land sales,¹⁰⁷ and bonds.¹⁰⁸ Since January 17, 1893, there has been no government, but rather Armed Forces established by the United States—the Provisional Government (1893-1894), Republic of Hawai'i (1894-1900), Territory of Hawai'i (1900-1959) and currently the State of Hawai'i (1959-present). As these entities were neither governments *de facto* nor *de jure*, their collection of tax revenues were not for the benefit of a *bona fide* government in the exercise of its police power.

Unlike the State of Hawai'i, which is an Armed Force, the United States is a *de jure* government, but its exercising of authority in the Hawaiian Islands in violation of international laws is unlawful. Therefore, the United States cannot be construed to have committed the act of pillaging since it is a legitimate government, but has appropriated private property through unlawful contributions, *e.g.* federal taxation, which is regulated by Article 48, 1907 Hague Convention, IV. The subsequent Article (49) provides, “If, in addition to the taxes mentioned in the above article, the occupant levies other money contributions in the occupied territory, this shall only be for the needs of the army or of the administration of the territory in question.” The United States collection of federal taxes from the residents of the Hawaiian Islands is an unlawful contribution that is exacted for the sole purpose of supporting the United States federal government and not for “the needs of the army or of the administration of the territory.”

War Crime—Omission of Administering Hawaiian Laws

The willful omission to administer Hawaiian law as mandated under Article 43, Hague Convention, IV, has placed Hawai'i's political economy into peril. In particular, all commercial entities registered to do business in the Hawaiian Islands, since January 17, 1893, which includes sole proprietorships, general partnerships, limited partnerships, limited liability partnerships, limited liability limited partnerships, corporations, s corporations, and limited liability companies, are illegal. Their legal basis stems from pretended governments, and not the Hawaiian Kingdom. Foreign commercial entities doing business in Hawai'i are also illegal because “Every corporation or incorporated company formed or organized under the laws of any foreign State, which may be desirous of carrying on business in this Kingdom and to take, hold and convey real estate therein, shall [register with] the office of the Minister of the Interior.”¹⁰⁹

Furthermore, all real estate transactions, *e.g.* deeds, leases or mortgages, since January 17, 1893 were not capable of being conveyed because the notaries public and the registrars of conveyances were self-declared and therefore unlawful. Hawaiian law requires that all conveyances be registered in the Bureau of Conveyances. “To entitle any conveyance, or other instrument to be recorded, it shall be acknowledged by the party or parties

¹⁰⁵ *Id.*, at 137-150.

¹⁰⁶ *Id.*, at 666.

¹⁰⁷ *Id.*, at 10.

¹⁰⁸ *Id.*, at 523, 565, 582, 599, 609, 627, 681.

¹⁰⁹ An Act Relating to Corporations and Incorporated Companies Organized under the Laws of Foreign Countries and Carrying on Business in this Kingdom (1880).

executing the same, before the Registrar of Conveyances, or his agent, or some judge of a court of record, or notary public of this Kingdom, or before some minister, commissioner or consul of the Hawaiian Islands, or some notary public or judge of a court of record in any foreign country.”¹¹⁰ This has not only rendered all conveyances of real estate defective, but has also voided all mortgages, which serve as security instruments for loans.

A deed not properly notarized and recorded in the government registry is a covered risk in title insurance policies. Title insurance is a “policy issued by a title company after searching the title, representing the state of that title and insuring the accuracy of the title search against claims of title defects.”¹¹¹ There are two policies of title insurance; a lender’s policies that cover the lender’s debt due to the invalidity of the mortgage loan, and an owner’s policies that cover the value of the owner’s property at the time the policies were purchased. Title insurance policies are predominantly sold in the United States.

As mortgage loans have been unsecured since 1893, this has a dramatic and devastating effect today on the investment rating and net value of mortgaged-backed securities that comprise mortgage loans from Hawai‘i. Mortgage-backed securities are pools of mortgage loans purchased from mortgage lenders by U.S. Government sponsored enterprises, such as Fannie Mae or Freddie Mac, or private institutions, who then sells claims to the monthly payments to investors in the form of securities called *tranches* (slices). The investor banks can also reshape these *tranches* into other securities called collateralized-debt-obligations. Mortgage-backed securities issued by Fannie Mae and Freddie Mac are given the highest investment rating of AAA and are the most actively traded commodity in the U.S. bond market.

Coupled with the fact that mortgage lenders are illegally doing business in Hawai‘i and borrowers have title insurance to pay off their debt, this revelation not only has the capacity of throwing the title insurance industry spiraling into bankruptcy, but will void stocks owned by shareholders of Hawai‘i mortgage lenders listed on the stock markets of NASDAQ, NYSE, and AMEX, such as Bank of Hawai‘i. This is not limited to Hawai‘i mortgage lenders listed on the stock markets, but all Hawai‘i businesses listed, such as Hawaiian Electric Industries. Business entities created under State of Hawai‘i law would simply vanish. Furthermore, title insurance companies could target the State of Hawai‘i for reimbursement under subrogation. This has the capacity of bringing the United States economy, which would include Hawai‘i, to the brink of financial disaster.

War Crime – Unfair Trials and Pillaging

All judicial and administrative courts in the Hawaiian Islands are not properly constituted under the laws of the Hawaiian Kingdom, nor are they properly constituted as courts of a Military Government. As such, these courts cannot provide a fair trial and therefore

¹¹⁰ See Hawaiian Civil Code, at §1255.

¹¹¹ See BLACK’S LAW, at 806.

decisions and judgments are extra-judicial. Since 2011, defendants in over 100 civil cases, whose homes were being foreclosed in Circuit Courts of the State of Hawai'i or being evicted as a result of non-judicial foreclosures in the district courts of the State of Hawai'i, were challenging the subject matter jurisdiction of these courts based upon evidence that the Hawaiian Kingdom, as an independent and sovereign state, continues to exist. As such, the controlling law for jurisdictions of any and all courts, whether judicial or administrative, within the territory of the Hawaiian Kingdom is Hawaiian law and not United States law.

As an occupied State, Hawaiian Kingdom law is the controlling law. In every case, the judges systematically and summarily denied the motions to dismiss without providing any rebuttable evidence that the courts are properly constituted, and homes were pillaged. The war crimes of unfair trial and pillaging also occurred in light of the fact that the mortgage lenders were provided evidence by those being foreclosed of defects in their titles and the invalidity of the mortgage instruments, but the mortgage lenders refused to file title insurance claims. What is more abhorrent and criminal is that borrowers were required to purchase lender's policies of title insurance for the protection of the mortgage lenders as a condition of the mortgage loan should the mortgage become void as a result of a defect in title.

Common Article 3 of the 1949 Geneva Conventions prohibits "the passing of sentences and the carrying out of executions without previous judgment pronounced by a regularly constituted court, affording all the judicial guarantees which are recognized as indispensable by civilized peoples." Article 43 of the Hague Convention, IV, mandates the occupying State "shall take all the measures in his power to restore, and ensure, as far as possible, public order and safety, while respecting, unless absolutely prevented, the laws in force in the country." According to United States Justice Kennedy, in *Hamdan v. Rumsfeld*, there was no need to determine whether or not defendants received a fair trial by the military commissions in Guantanamo Bay because they were not properly constituted in the first place. Justice Kennedy reasoned that the fairness of a trial is a moot point since the Court already found that "the military commissions...fail to be regularly constituted under Common Article 3."¹¹²

As an Armed Force of the United States, the State of Hawai'i is a pretended government. All decisions and judgments made by State of Hawai'i judicial and administrative courts are extrajudicial done "outside the course of regular judicial proceedings."¹¹³ And where individuals have been sentenced to prison, they have the status of prisoners of war and protection afforded under the 1949 Geneva Convention, III. Summary judgments stem from "willfully depriving a prisoner of war of the rights of fair and regular trial." which is a war crime under Article 130.

¹¹² *Hamdan v. Rumsfeld*, 548 U.S. 557, 655 (2006).

¹¹³ See BLACK'S LAW, at 586.

RISK OF DELAY

It is impossible for the State of Hawai'i to maintain its existence in light of the ascending knowledge of Hawai'i's legal status as an independent state under an illegal and prolonged occupation. The foundation of the existence of the State of Hawai'i is directly traced to the provisional government, which was illegally established through intervention by the U.S. diplomat with the assistance of U.S. troops in 1893. In similar fashion through intervention, the U.S. Congress illegally established the State of Hawai'i in 1959 in direct violation of its mandate to administer the laws of the Hawaiian Kingdom. This omission by the United States is not only a war crime, but has consequently placed every official and employee of the State of Hawai'i into a position of criminal liability as war crimes have and continue to be committed on a colossal scale. In the latest edition of the War Report, 2013, Hawai'i's occupation is noted under the category of international armed conflicts. Casey-Maslen states, "Other belligerent occupations that have been alleged include the occupation by the UK of the Falkland Islands/Malvinas (Argentina claims this as sovereign territory), of Tibet by China, and of the state of Hawaii by the USA."¹¹⁴ Hawai'i would not be noted here unless there is an evidential basis.

On April 28, 2015, a judgment by the Swiss Federal Criminal Court's Objections Chamber specifically named the former CEO of Deutsche Bank, Josef Ackermann, former State of Hawai'i Governor, Neil Abercrombie, current Lieutenant Governor, Shan Tsutsui, former Director of Taxation, Frederik Pablo, and former Deputy Director of Taxation, Joshua Wisch, as alleged war criminals.¹¹⁵ The Swiss Federal Criminal Court is addressing war crime complaints filed with the Swiss Attorney General by a Hawaiian national who is alleging that Deutsche Bank pillaged his home as a direct result of an unfair trial in a State of Hawai'i court;¹¹⁶ and by a Swiss citizen alleging that the State of Hawai'i pillaged his private property through taxation.¹¹⁷

Switzerland is a civil-law state, as opposed to a common-law state like the United States and the United Kingdom. Under the Swiss criminal procedure, judges have the capacity to conduct criminal investigations as an investigative magistrate, along with the prosecutor and the police. The Objections Chamber of the Federal Criminal Court oversees investigative magistrates, prosecutors and police if a person objects to their

¹¹⁴ See CASEY-MASLEN, at 28.

¹¹⁵ Kale Kepekaio Gumapac, et al. v. Office of Federal Attorney General, BB 2015.36+37 (April 28, 2015), original in German *available at* [http://hawaiiankingdom.org/pdf/Federal_Criminal_Court_28_April_2015_Deutsche_\(redacted\).pdf](http://hawaiiankingdom.org/pdf/Federal_Criminal_Court_28_April_2015_Deutsche_(redacted).pdf), translation into English *available at* [http://hawaiiankingdom.org/pdf/Federal_Criminal_Court_28_April_2015_English_\(redacted\).pdf](http://hawaiiankingdom.org/pdf/Federal_Criminal_Court_28_April_2015_English_(redacted).pdf).

Appendix V.

¹¹⁶ War Crimes Report, Dec. 7, 2014, *available at* http://hawaiiankingdom.org/pdf/Swiss_AG_War_Crimes_Report.pdf. See also Gumapac's Amended War Crimes Complaint, Jan. 22, 2015, *available at* http://hawaiiankingdom.org/pdf/Gumapac_Amended_Complaint_1_22_15.pdf.

¹¹⁷ Unnamed Swiss citizen's War Crime Complaint, Jan. 21, 2015, *available at* [http://hawaiiankingdom.org/pdf/Swiss_Complaint_\(redacted\).pdf](http://hawaiiankingdom.org/pdf/Swiss_Complaint_(redacted).pdf).

decisions in a criminal investigation. The Federal Criminal Court's April 28 judgment addressed an objection by a Hawaiian and a Swiss national who were both objecting to the Attorney General's decision to terminate the criminal investigation. The Prosecutor decided not to pursue an indictment because it took the position that Hawai'i was annexed by a congressional joint resolution.¹¹⁸ In its decision, however, the Court appears to not have been convinced that Hawai'i was annexed by a domestic law of the United States, and began to state the relevant facts and allegations of the case that read like an indictment. Instead of concluding with charges, the Court stated it was prevented from moving forward because the filing of the objection did not meet the time line of ten days.¹¹⁹

In the civil-law tradition, a Prosecutor will need to present written charges—an indictment, to a court for confirmation. According to O'Connor, "the indictment will describe the acts committed by the suspect, and outline the applicable law and the evidence upon which the accusation rests."¹²⁰ This is similar to the contents of an indictment you would find in the common-law system. In a common-law indictment, "the prosecutor must present sufficient evidence to establish the identity of the accused, and probable cause to arrest him or her. However, the 'requirement of sufficient evidence to establish [these two facts] is considerably less exacting than a requirement of sufficient evidence to warrant a guilty finding.'"¹²¹ It is clear that the Swiss Court, in its statement, named the accused and provided probable cause. Probable cause is defined as an "apparent state of facts found to exist upon reasonable intelligent and prudent man to believe, in a criminal case, that the accused person had committed the crime."¹²²

What the judgment does not reference is that on April 9, a day after the Court received the objection by FedEx, a directive from the President of the Objections Chamber was sent to the Prosecutor. The directive stated, "In the matter mentioned above, a complaint against your decision not to engage of February 15, 2015 has been received at the Federal Criminal Court. You are requested to furnish the Federal Criminal Court right away with the records established in the abovementioned matter (including documents of receipt) with an index of the records."¹²³ The Court's recital of facts came from the record of the Prosecutor's investigation and not from the victims, which the Court clearly noted after citing the facts of the case by stating in parenthesis (case files, box section 3+act. 1.1). In

¹¹⁸ Swiss Prosecutor's Report on War Crimes in Hawai'i, dated February 3, 2015 (English translation), available at http://hawaiiakingdom.org/pdf/Prosec_Rep_2_3_15_Eng_redacted.pdf.

¹¹⁹ The objection was sent off from Honolulu by FedEx on April 1, one day prior to the close of the ten-day period, but it did not reach the Objections Chamber until April 8. Under Swiss procedure, the Courts can only accept deliveries of private couriers, *i.e.* FedEx, on the date it was delivered and not the date sent as it would if it was sent via the Swiss postal service or a diplomatic representative in a foreign country. The Swiss Federal Criminal Court Objections Chamber, in its decision, cited A & B., Ltd. vs. Office of the Federal Attorney General, reference no. BB.2012.155-156 (October 31, 2012), as the basis for its rationale.

¹²⁰ DR. VIVIENNE O'CONNOR, *Practitioner's Guide: Common Law and Civil Law Traditions*, INPROL 26 (March 2012), available at <http://www2.fjc.gov/sites/default/files/2015/Common%20and%20Civil%20Law%20Traditions.pdf>.

¹²¹ *Commonwealth v. Caracciola*, 409 Mass. 648, 650 (1991).

¹²² See BLACK'S LAW, at 1201.

¹²³ Directive from President of Objections Chamber to Prosecutor, April 9, 2015, available at http://hawaiiakingdom.org/pdf/FCC_Ltr_4_9_15_redacted.pdf.

other words, the Prosecutor was prepared to pursue written charges, but decided not to because the United States claimed it annexed Hawai'i by legislation.

The purpose of criminal investigations is to collect facts that aim to identify and locate the guilty parties and to provide evidence of their guilt.¹²⁴ It is important to keep in mind that the time line is a procedural matter and that it did not diminish the facts of the case. A simple remedy would be to re-file a second complaint with the Attorney General and cite the evidence that is already in the possession of the Prosecutor. Here follows the English translation from German of the Court's decision.

“The Objections Chamber states:

-that on December 22, 2014 the former [diplomat], introduced a report by David Keanu Sai (henceforth “Sai”) of December 7, 2014 to the Office of the Federal Attorney General, which stated that war crimes had been committed in Hawaii;

-that according to this report, Sai suspects the US-American authorities of committing war crimes and pillaging by way of the unlawful levying of taxes, since all locally established authorities are said to be unconstitutional according to Hawaiian Kingdom law;

-that by way of a letter dated January 21, 2015, [Unnamed Swiss citizen] (henceforth “[the Swiss citizen]”) and his representative Sai made a criminal complaint with the Office of the Federal Attorney General, stating that [the Swiss] was a victim of a war crime according to Art. 115 StPO, because during the years 2006-2007 and 2011-2013, he had paid taxes to US-American authorities in Hawaii without justification, and that [the Swiss citizen], in addition, is the victim of fraud, committed by the State of Hawaii, because together with his wife he wanted to acquire a real estate property, which however on the basis of the lacking legitimacy of the official authorities of Hawaii to transfer the property title, was not possible, for which reason the governor of the State of Hawaii Neil Abercrombie (henceforth “Abercrombie”), Lieutenant Shan Tsutsui (henceforth “Tsutsui”), the director of the Department of Taxation Frederik Pablo (henceforth “Pablo”) and his deputy Joshua Wisch (henceforth “Wisch”) are to be held criminally accountable for the pillaging of [the Swiss citizens's] private property and for fraud;

-that, in addition, by way of a letter dated January 22, 2015, Sai, in the name of Kale Kepekaio Gumapac (henceforth “Gumapac”) contacted the office of the Federal Attorney General and requested that criminal proceedings against Josef Ackermann (henceforth “Ackermann”), the former CEO of Deutsche Bank National Trust Company (henceforth “Deutsche Bank”) be opened and in this connection invoked rights deriving from Art. 1 of the friendship treaty between the Swiss Confederation and the then Hawaiian Kingdom of July 20, 1864, which has not been cancelled; that this complaint arose from a civil dispute between Gumapac and Deutsche Bank; that Gumapac was the owner of a property on Hawaii and a mortgagee of Deutsche Bank; that however the title of property, due to the illegal annexation of the Kingdom of Hawaii, was null and void, since

¹²⁴ CHARLES E. O'HARA, FUNDAMENTALS OF CRIMINAL INVESTIGATION 5 (2nd ed. 1970).

the local US-American notaries were not empowered to transfer title; that Deutsche Bank did not recognize this fact and that it had foreclosed on Gumapac's house to cover the mortgage debt, instead of claiming its rights stemming from a "title insurance;" that the bank therefore pillaged Gumapac's house according to the international laws of war (case files, box section 3 and 5);

-that the office of the Federal Attorney General on February 3, 2015 decreed a decision of non-acceptance of the criminal complaints and civil suits against Ackermann, Abercrombie, Tsutsui, Pablo and Wisch on account of war crimes allegedly committed in Hawaii between 2006 and 2013 (case files, box section 3 + act. 1.1);

-that Gumapac and [the Swiss citizen] introduced, in opposition to this, an objection on March 31, 2015 to the Objections Chamber of the Federal Criminal Court and accordingly requested the cancellation of the decision of non-acceptance, and the carrying out of the criminal proceedings against the defendants indicated by them (act. 1)."¹²⁵

The recital of these facts and the naming of State of Hawai'i officials, as alleged war criminals, should be alarming to the State of Hawai'i. If Hawai'i were a part of the United States there would be no grounds for the allegation of war crimes; and the naming of State of Hawai'i officials, being government officials of the United States, would be a direct act of intervention in the internal affairs of the United States on the part of Switzerland, and consequently a violation of the 1850 U.S.-Swiss treaty¹²⁶ and international law. Additionally, the naming of the CEO of Deutsche Bank should also be alarming to other lending institutions, *e.g.* First Hawaiian Bank, who have also committed war crimes of pillaging through unlawful foreclosures.

Furthermore, the Swiss Court also acknowledged that the 1864 treaty between the Hawaiian Kingdom and Switzerland was not cancelled. This is a significant concession because since a treaty is the highest source of international law, it is also an agreement between two or more sovereign states. This is another indication that the Court does not recognize Hawai'i as part of the United States, because if it were annexed under international law, the Swiss treaty would have become void. All "treaties concluded between two States become void through the extinction of one of the contracting parties."¹²⁷ According to Hyde, "When a state relinquishes its life as such through incorporation into, or absorption by, another state, the treaties of the former are believed to be automatically terminated."¹²⁸ Therefore, by acknowledging that the Hawaiian-Swiss treaty was not canceled is tantamount to acknowledging the continuity of the Hawaiian Kingdom as a state and treaty partner.

¹²⁵ See Gumapac, et al. v. Office of Federal Attorney General, English translation.

¹²⁶ 11 U.S. Stat. 587; Treaty Series 353.

¹²⁷ See OPPENHEIM, at 851.

¹²⁸ Charles Cheney Hyde, *The Termination of the Treaties of a State in Consequence of its Absorption by Another—The Position of the United States*, 26 AM. J. INT'L L. 133 (1932).

Along with the Swiss proceedings, a war crime complaint has also been filed with the Canadian authorities alleging destruction of property on Mauna Kea by the construction of telescopes.¹²⁹ Additional complaints are planned to be filed with the authorities of other countries, all of which have similar war crime statutes as the Swiss. Prior to the Swiss proceedings, complaints against State of Hawai'i judges and mortgage lenders were also filed with the Prosecutor of the International Criminal Court in The Hague, Netherlands.¹³⁰ Countries that have similar war crime statutes as Switzerland are also state parties to the Rome Statute of the International Criminal Court, which provides that primary responsibilities for the prosecution for war crimes are with the member states, while the International Criminal Court has complimentary jurisdiction.¹³¹ The International Criminal Court will prosecute if states are unwilling or unable to prosecute themselves.

Compliance with the law of occupation and the administration of Hawaiian Kingdom law will remedy the blatant violations of international law and the large-scale commission of war crimes that would appear to be part of a systematic plan or policy, whether by chance or design. As the State of Hawai'i is the product of an unlawful act, it cannot claim any powers or rights as a government—*ex injuria jus non oritur* (illegal acts cannot create law). It is an Armed Force, whose actions are limited by the laws and customs of war on land. The fact that the State of Hawai'i has acted as if it were a government is why it is in the dire situation it is in now. The remedy for the State of Hawai'i is to be a legitimate government, and the only legitimate government during occupations is a Military Government.

REMEDIAL PRESCRIPTION

In decision theory, a negative-sum game is where everyone loses. Any decision from a loss can only have the effect of a loss—a lose-lose situation. The State of Hawai'i is presently operating from a position of no lawful authority, and everything that it has done or that it will do is unlawful. There can be no fruit from a poisonous tree. The rapidly growing knowledge and awareness of the prolonged occupation of Hawai'i has the effect of causing the State of Hawai'i to speedily descend and crash. The State of Hawai'i has found itself in a mammoth negative-sum game. In order to stave off the inevitable, the *acting* Government and the State of Hawai'i must cooperate so that positive-sums are realized. The laws and customs of war during occupation provide the legal basis for the State of Hawai'i to realize positive-sums, which the *acting* Government has been adhering to since its inception in 1996.

¹²⁹ KITV News, *TMT protesters in Canada file formal war crime*, available at

<http://www.kitv.com/news/tmt-protesters-in-canada-file-formal-war-crimes/33066402>.

¹³⁰ Hawaiian Kingdom Blog, *International Criminal Court to Consider Alleged War Crimes Committed by State of Hawai'i Officials, Judges, Banks and Attorneys*, available at

<http://hawaiiankingdom.org/blog/international-criminal-court-to-consider-alleged-war-crimes-committed-by-state-of-hawaii-officials-judges-banks-and-attorneys/>.

¹³¹ Rome Statute, International Criminal Court, preamble, “the International Criminal Court established under this Statute shall be complementary to national criminal jurisdictions.”

Critical to the administration of Hawaiian law is the establishment of Military Government, which is “defined as the supreme authority exercised by an armed occupying force over the lands, properties, and inhabitants of an enemy, allied, or domestic territory.”¹³² The establishment of a Military Government is not limited to the U.S. military, but to any Armed Force that is in effective control of occupied territory. U.S. Army Field Manual FM 27-5 provides that an “armed force in territory other than that of [of the occupied state] has the duty of establishing CA/MG [civil affairs/military government] when the government of such territory is absent or unable to function properly.”¹³³ What distinguishes the U.S. military stationed in the Hawaiian Islands from the State of Hawai'i in light of the laws and customs of war during occupation, is that the State of Hawai'i, as an Armed Force, is in effective control of the majority of Hawaiian territory. U.S. military sites number 118 that span 230,929 acres of the Hawaiian Islands, which is 20% of the total acreage of Hawaiian territory.¹³⁴

As an Armed Force whose allegiance is to the occupier, the State of Hawai'i has no choice but to establish itself as a Military Government, which is allowable under the laws and customs of war during occupation. To do so, would prevent the collapse of the State of Hawai'i that would no doubt lead to an economic catastrophe with devastating effect on the U.S. market and the global economy. Military Government is empowered under the laws and customs of war during occupation to provisionally serve as the administrator of the “laws in force in the country,” which includes the “decree” of the *acting* Government in accordance with Article 43. Without the decree of the *acting* Government all commercial entities created by the State of Hawai'i, *e.g.* corporations and partnerships, and all conveyances of real estate would simply evaporate. Therefore, it is crucial for the Military Government to work in tandem with the *acting* Government to ensure the lawfulness of its actions for not only the present, but also for the future maintenance of Hawai'i's economy.

The proclamation for the establishment of a Military Government would be done in like fashion to the declaration of martial law for the Hawaiian Islands from December 7, 1941 to April 4, 1943. Governor Joseph Poindexter and Lieutenant General Walter Short relied on section 67 of the 1900 Territorial Act (48 U.S.C. §532) as the basis to declare martial law under a Military Government headed by General Short as the Military Governor, being appointed by Poindexter.¹³⁵ The Proclamation, however, required the prior approval

¹³² United States Army and Navy Manual of Civil Affairs Military Government, Army Field Manual FM 27-5, Navy Manual OPNAV P22-1115, 2-3 (October 1947), *available at* http://www.loc.gov/rr/frd/Military_Law/pdf/FM-27-5-1947.pdf. Appendix VI.

¹³³ *Id.*, at 4.

¹³⁴ See U.S. Department of Defense's Base Structure Report (2012), *available at* <http://www.acq.osd.mil/ie/download/bsr/BSR2012Baseline.pdf>.

¹³⁵ §67. Enforcement of law — That the governor shall be responsible for the faithful execution of the laws of the United States and of the Territory of Hawaii within the said Territory, and whenever it becomes necessary he may call upon the commanders of the military and naval forces of the United States in the Territory of Hawaii, or summon the posse comitatus, or call out the militia of the Territory to prevent or suppress lawless violence, invasion, insurrection, or rebellion in said Territory, and he may, in case of rebellion or invasion, or imminent danger thereof, when the public safety requires it, suspend the privilege of the writ of habeas corpus, or place the Territory, or any part thereof, under martial law until communication can be had with the President and his decision thereon made known.

of President Franklin D. Roosevelt, since the Governor of the Territory of Hawai'i was a Presidential appointment. When the Armed Force was transformed from Territory to the State of Hawai'i in 1959, section 67 was superseded by Article V, section 5 of the State of Hawai'i Constitution, which gives the Governor full and complete authorization to declare martial law without the prior approval of the President. Section 5 provides, "The governor shall be commander in chief of the armed forces of the State and may call out such forces to execute the laws, suppress or prevent insurrection or lawless violence or repel invasion."

The fundamental difference between Martial Law and Military Government is that the former is instituted within domestic territory when the military supersedes the civil authority on the grounds of self-preservation during a foreign invasion, while the latter is instituted in foreign territory when the occupied state's government ceases to operate as a result of an armed conflict. Military Government "derives its authority from the customs of war, and not the municipal law."¹³⁶ Its functions, however, are the same except for the venue.

"Military government is exercised when an armed force has occupied such territory, whether by force or agreement, and has substituted its authority for that of the sovereign or previous government. The right of control passes to the occupying force limited only by the rules of international law and established customs of war."¹³⁷

There is no question as to the authority of the Governor to declare the establishment of a Military Government, but there will be questions as to the authority of the individual himself if he is an alleged war criminal. Unlike former Governor Abercrombie, Governor David Ige is not currently under criminal investigation for war crimes. The filing of the second complaint with the Swiss authorities is pending, which does explicitly name Governor Ige, the new Director of Taxation, Maria E. Zielinski, and Deputy Director, Joseph K. Kim. Another complaint for pillaging is also pending to be filed by a New Zealand citizen with the New Zealand Ministry of Justice in Wellington, which has a similar war crime statute as Switzerland.¹³⁸ Before establishing a Military Government, Governor Ige has to ensure that he is not the subject of a criminal investigation, which would violate the clean hands doctrine. He cannot be perceived as acting in bad faith. In order to do just he must be just.

In order to transform the State of Hawai'i into a Military Government, the Governor will need to decree, by Proclamation, the establishment of Military Government in accordance with section 28 of FM 27-5. Central to the proclamation is the administration of Hawaiian Kingdom law in accordance with Article 43 to include the decree of the *acting* Government of October 10, 2014. Additionally, the proclamation will also decree that all

¹³⁶ WILLIAM E. BIRKIMER, *MILITARY GOVERNMENT AND MARTIAL LAW* 53 (3rd ed. 1914).

¹³⁷ See FM 27-5, at 3.

¹³⁸ The author of this report is the attorney-in-fact for the victims and has recommended, as of the date of this report, to temporarily refrain from filing the complaints with the Swiss and New Zealand authorities until they are sure that Governor Ige will not proclaim a Military Government.

State of Hawai'i judicial and executive officers and employees remain in operation with the exception of the legislative bodies to include the Legislature and County Councils. This reasoning is because "since supreme legislative power is vested in the military governor, existing legislative bodies will usually be suspended."¹³⁹ The Military Government will have to conform to the laws and customs of war during occupation, international humanitarian law, and FM 27-5—*United States Army and Navy Manual of Civil Affairs Military Government*.

The Proclamation, however, would not have the effect of absolving criminal responsibility by State of Hawai'i officials for war crimes, but it will mitigate them. The commission of war crimes prior to the Proclamation can be dealt with through restitution and reparations made to the victims. After the Proclamation, however, the Military Government has the duty to prevent and to prosecute war crimes under the laws and customs of war during occupation.

CONCLUSION

The root cause for putting the State of Hawai'i into this dire situation is the deliberate and intentional failure of the United States to establish a Military Government to administer the laws of the Hawaiian Kingdom in accordance with Article 43. The United States' creation and maintenance of Armed Forces since 1893, which included the Provisional Government (1893-1894), Republic of Hawai'i (1894-1900), Territory of Hawai'i (1900-1959), and presently the State of Hawai'i, has worsened the situation today and placed Hawai'i, and its residents, in a position of catastrophic proportions. Thus, this is a race against time. If the second war crimes complaint is filed with the Swiss authorities to reinstate the prosecution of war crimes committed by members of the State of Hawai'i then the world-at-large will naturally conclude what is already been stated in this report.

In this report, the author has laid out the overarching themes that warrant and compel the State of Hawai'i to transform itself into a Military Government, not only its own survival, but for the survival of Hawai'i. The first Armed Force created by the United States in 1893 was comprised of insurgents who set a course to commit the high crime of treason for self-gain and greed. The current Armed Force, the State of Hawai'i, however, is not comprised of insurgents, but rather people of Hawai'i who were led to believe, through *Americanization*, that they are an incorporated territory of the United States and that the State of Hawai'i is a *bona fide* government.

We are at a stage where no one can deny the true history of this country. People are becoming aware of their rights and the right to hold people accountable for the violation of these rights. These human rights cannot be dismissed without incurring criminal liability. The Governor of the State of Hawai'i has no choice but to establish a Military Government and begin to comply with the laws and customs of war during occupation. It is not only his duty, but it is his moral obligation to the people of Hawai'i.

¹³⁹ See FM 27-5, at 11.

Appendix ‘III’

UNITED KINGDOM OF GREAT BRITAIN AND IRELAND

Signed at Honolulu, July 10th 1851

WHEREAS, a Treaty of Friendship; Commerce and Navigation between Us and Her most Gracious Majesty the Queen of Great Britain and Ireland, Defender of the Faith, &c., &c., &c., was concluded and signed at Honolulu, on the tenth day of July, in the year of our Lord one thousand eight hundred and fifty-one, by the Plenipotentiaries of Us and of the said Queen of Great Britain duly and respectively authorized for that purpose, which treaty is word for word, as follows:

HER MAJESTY THE QUEEN of the United Kingdom of Great Britain and Ireland, and HIS MAJESTY THE KING of the Hawaiian Islands, being desirous to maintain and improve the relations of good understanding which happily subsist between them, and to promote the commercial intercourse between their respective subjects, have deemed it expedient to conclude a Treaty of Friendship, Commerce and Navigation, and have for that purpose named their respective Plenipotentiaries, that is to say:

Her Majesty the Queen of Great Britain and Ireland, William Miller, Esquire, Her Consul General for the Islands in the Pacific Ocean:

And His Majesty the King of the Hawaiian Islands, Robert Crichton Wyllie, Esquire, His Minister of Foreign Relations, Member of His Privy Council of State and of His House of Nobles:

Who, after having communicated to each other their full powers, found to be in good and due form, have agreed upon and concluded the following articles:

ARTICLE I. There shall be perpetual friendship between Her Majesty the Queen of the United Kingdom of Great Britain and Ireland, Her Heirs and Successors, at the King of the Hawaiian Islands, His Heirs and Successors, and between their respective subjects.

ARTICLE II. There shall be between all the dominions of Her Britannic Majesty, and the Hawaiian Islands, a reciprocal freedom of commerce. The subjects of each of the two contracting parties respectively, shall have liberty freely and securely to come with their ships and cargoes, to all places, ports and rivers in the territories of the other, where, trade with other nations is permitted. They may remain and reside in any part of the said territories respectively, and hire and occupy houses and warehouses; and may trade, by wholesale or retail, in all kinds of produce, manufactures, and merchandise of lawful commerce; enjoying the same exemptions and privileges as native subjects, and subject always to the same laws and established customs as native subjects.

In like manner, the ships of war of each contracting party respectively, shall have liberty to enter into all harbor, rivers and places, within the territories of the other, to which the Ships of war of other nations are or may be permitted to come, to anchor there,

and to remain, and refit; subject always to the laws and regulations of the two countries respectively.

The stipulations of this article do not apply to the coasting trade, which each contracting party reserves to itself, respectively, and shall regulate according to its own laws.

ARTICLE III. The two contracting parties hereby agree that any favor, privilege, or immunity whatever, in matters of commerce or navigation, which either contracting party has actually granted, or may hereafter grant, to the subjects or citizens of any other State shall be extended to the subjects or citizens of the other contracting party, gratuitously if the concession in favor of that other State shall have been gratuitous, or in return for a compensation as nearly as possible of proportionate value and effect, to be adjusted by mutual agreement, if the concession shall have been conditional.

ARTICLE IV. No other or higher duties shall be imposed on the importation into the dominions of Her Britannic Majesty of any article the growth, produce or manufacture of the Hawaiian Islands, and no other or higher duties shall be imposed on the importation into the Hawaiian Islands, of any article the growth, produce or manufacture of Her Britannic Majesty's dominions, than are or shall be payable on the like article being the growth, produce or manufacture of any other foreign country.

Nor shall any other or higher duties or charges be imposed in the territories of either of the contracting parties on the exportation of any article to the territories of the other, than such as are or may be payable, on the exportation of the like article, to any other foreign country. No prohibition shall be imposed upon the importation of any article, the growth, produce or manufacture of the territories of either of the two contracting parties, into the territories of the other, which shall not equally extend to the importation of the like articles, being the growth, produce, or manufacture of any other country. Nor shall any prohibition be imposed upon the exportation of any article from the territories of either of the two contracting parties to the territories of the other, which shall not equally extend to the exportation of the like article to the territories of all other nation.

ARTICLE V. No other or higher duties or charges on account of tonnage, light, or harbor dues, pilotage, quarantine, salvage in case of damage or shipwreck, or any other local charges, shall be imposed, in any of the ports of the Hawaiian Islands on British vessels, than those payable in the same ports by Hawaiian vessels, nor in the ports of Her Britannic Majesty's territories on Hawaiian vessels, than shall be payable in the same ports on British vessels.

ARTICLE VI. The same duties shall be paid on the importation of any article which is or may be legally importable into the Hawaiian Islands, whether such importation shall be in Hawaiian or in British vessels; and the same duties shall be paid on the importation of any article which is or may be legally importable into the dominions of Her Britannic Majesty, whether such importation shall be in British or Hawaiian vessels. The same duties shall be paid, and the same bounties and drawbacks allowed, on the exportation of

any article which is or may be legally exportable from the Hawaiian Islands, whether such exportation shall be in Hawaiian or in British vessels; and the same duties shall be paid, and the same bounties and drawbacks allowed, on the exportation of any article which is or may be legally exportable from Her Britannic Majesty's dominions, whether shall be in British or in Hawaiian vessels.

ARTICLE VII. British whalships shall have access to the ports of Hilo, Kealakeakua and Hanalei, in the Sandwich Islands, for the purpose of refitment and refreshment, as well as to the ports of Honolulu and Lahaina, which two last mentioned ports only are ports of entry for all merchant vessels, and in all the above-named ports, they shall be permitted to trade or to barter their supplies or goods, excepting spirituous liquors, to the amount of two hundred dollars, *ad valorem*, for each vessel, without paying any charge for tonnage or for harbor dues of any description, or any duties or imposts whatever upon the goods or articles so traded or bartered. They shall also be permitted, with the like exemption from all charges for tonnage and harbor dues, further to trade or bartar, with the same exception as to spirituous liquors, to the additional amount of one thousand dollars, *ad valorem*, for each vessel, paying on the additional goods and articles so traded and bartered, no other or higher duties, than are payable on like goods and articles, when imported in national vessels, and by native subjects. They shall also be permitted to pass from port to port of the Sandwich Islands for the purpose of procuring refreshments, but they shall not discharge their seamen or land their passengers in the said Islands, except at Honolulu and Lahaina and in all the ports named in this article, British whalships shall enjoy, in all respects whatsoever, all the rights, privileges and immunities which are or may be enjoyed by national whalships of the most favored nation. The like privilege of frequenting the three ports of the Sandwich Islands, named in this article, which are not ports of entry for merchant vessels, is also guaranteed to all the public armed vessels of Great Britain. But nothing in this article shall be construed as authorizing any British vessel, having on board any disease, usually regarded as requiring quarantine, to enter, during the continuance of any such disease on board, any port of the Sandwich Islands, other than Honolulu or Lahaina.

ARTICLE VIII. All merchants, commanders of ships, and others, the subjects of Her Britannic Majesty, shall have full liberty, in the Hawaiian Islands, to manage their own affairs themselves, or to commit them to the management of whomsoever they please, as broker, factor, agent or interpreter; nor shall they be obliged to employ any other persons than those employed by Hawaiian subjects, nor to pay to such persons as they shall think fit to employ, any higher salary or remuneration than such as is paid, in like cases, by Hawaiian subjects. British subjects in the Hawaiian Islands shall be at liberty to buy from and to sell to whom they like, without being restrained or prejudiced by any monopoly, contract, or exclusive privilege of sale or purchase whatever; and absolute freedom shall be allowed in all cases to the buyer and seller, to bargain and fix the price of any goods, wares or merchandise, imported into, or exported from the Hawaiian Islands, as they shall see good observing the laws and established customs of those Islands. The same privileges shall enjoyed in the dominions of Her Britannic Majesty, by Hawaiian subjects, under the same conditions.

The subjects of either of the contracting parties in the territories of the other, shall receive and enjoy full and perfect protection for their persons and property, and shall, have free and open access to the courts of justice in the said countries, respectively, for the prosecution and defense of their just rights; and they shall be at liberty to employ, in all causes, the advocates, attorneys or agents of whatever description, whom they may think proper; and they shall enjoy in this respect the same rights and privileges as native subjects.

ARTICLE IX. In whatever relates to the police of the ports, the lading and unlading of ships, the warehousing and safety of merchandise, goods and effects, the succession to personal estates by will or otherwise, and the disposal of personal property of every sort and denomination by sale, donation, exchange or testament, or in any other manner whatsoever, as also with regard to the administration of justice, the subjects of each contracting party shall enjoy, in the territories of the other, the same privileges, liberties and rights, as native subjects; and they shall not be charged, in any of these respects, with any other or higher imposts or duties, than those which are or may be paid by native subjects: subject always to the local laws and regulations of such territories.

In the event of any subject of either of the two contracting parties dying without will or testament, in the territories of the other contracting party, the consul-general, consul, or acting consul of the nation to which the deceased may belong, shall, so far as the laws of each country will permit, take charge of the property which the deceased may have left, for the benefit of his lawful heirs and creditors, until an executor or administrator be named according to the laws of the country in which the death shall have taken place.

ARTICLE X. The subjects of Her Britannic Majesty residing in the Hawaiian Islands, and Hawaiian subjects residing in the dominions of Her Britannic Majesty, shall be exempted from all compulsory military service whatsoever, whether by sea or land, and from all forced loans or military exactions or requisitions; and they shall not be compelled, under any pretext whatsoever, to pay any ordinary charges requisitions or taxes, other or higher than those that are, or may be, paid by native subjects.

ARTICLE XI. It is agreed and covenanted that neither of the two contracting parties shall knowingly receive into, or retain in, its service, any subject of the other party who have deserted from the naval or military service of that other party; but that, on the contrary, each of the contracting parties shall respectively discharge from its service any such deserters, upon being required by the other party so to do.

And it is further agreed, that if any of the crew shall desert from a vessel of war or merchant vessel of either contracting party, while such vessel is within any port in the territory of the other party, the authorities of such port and territory shall be bound to give every assistance in their power for the apprehension of such deserters, on application to that effect being made by the Consul of the party concerned, or by the deputy or representative of the Consul; and no public body shall protect or harbor such deserters.

It is further agreed and declared, that any other favor or facility with respect to the recovery of deserters, which either of the contracting parties has granted or may hereafter grant, to any other State, shall be considered as granted also to the other contracting party, in the same manner as if such favor or facility had been expressly stipulated by the present treaty.

ARTICLE XII. It shall be free for each of the two contracting parties to appoint consuls for the protection of trade, to reside in the territories of the other party; but before any consul shall act as such, he shall, in the usual form, be approved and admitted by the Government to which he is sent; and either of the contracting parties may except from the residence of consuls such particular places as either of them may judge fit to be excepted. The diplomatic agents and consuls of the Hawaiian Islands, in the dominions of Her Britannic Majesty, shall enjoy whatever privileges, exemptions and immunities are, or shall be granted there to agents of the same rank belonging to the most favored nation; and, in like manner, the diplomatic agents and consuls of Her Britannic Majesty in the Hawaiian Islands shall enjoy whatever, privileges, exemptions, and immunities are or may be granted there to the diplomatic agents and consuls of the same rank belonging to the most favored nation.

ARTICLE XIII. For the better security of commerce between the subjects of Her Britannic Majesty and of the King of the Hawaiian Islands, it is agreed that if, at any time, any rupture, or any interruption of friendly intercourse should unfortunately take place between the two contracting parties, the subjects of either of the two contracting parties shall be allowed a year to wind up their accounts, and dispose of their property; and a safe conduct shall be given them to embark at the port which they shall themselves select. All subjects of either of the two contracting parties who may be established in the territories of the other, in the exercise of any trade or special employment, shall in such case have the privilege of remaining and continuing such trade and employment therein; without any manner of interruption in full enjoyment of their liberty and property as long as they behave peaceably, and commit no offense against the laws; and their goods and effects, of whatever description they may be, whether in their own custody, or entrusted to individuals or to the State, shall not be liable to seizure or sequestration, or to any other charges or demands than those which may be made upon the like effects or properly belonging to native subjects. In the same case, debts between individuals, public funds, and the shares of companies shall never be confiscated, sequestered or detained.

ARTICLE XIV, The subjects of Her Britannic Majesty, residing in the Hawaiian Islands, shall not be disturbed, persecuted or annoyed on account of their religion, but they shall have perfect liberty of conscience therein, and shall be allowed to celebrate divine service, either within their own private houses, or in their own particular churches or chapels, which they shall be at liberty to build and maintain in convenient places, approved of by the Government of the said Islands. Liberty shall also be granted to them to bury in burial places which, in the same manner, they may freely establish and maintain, such subjects of Her Britannic Majesty, who may die in the said Islands. In the like manner, Hawaiian subjects shall enjoy, within the dominions of Her Britannic Majesty, perfect and unrestrained liberty of conscience, and shall be allowed to exercise

their religion publicly or privately, within their own dwelling houses, or in the chapels and places of worship appointed for that purpose agreeably to the system of toleration established, in the dominions of Her said Majesty.

ARTICLE XV. In case there should at any time be established British mail packets, touching at a port of the Sandwich Islands, a British packet agent shall be permitted to reside at such port, and to collect, on account of the British Post-office, the British sea-rate of postage which may be hereafter fixed for the conveyance of letters by British packets from the Sandwich Islands, to any other place to which those packets may proceed.

Such British mail packets shall have free access to the ports of the Sandwich Islands, and shall be allowed to remain to refit, to refresh, to land passengers and their baggage, and to transact any business connected with the public mail service of Great Britain. They shall not be subject in such ports to any duties of tonnage, harbor, light-houses, quarantine, or other similar duties, of whatever nature or under whatever denomination.

ARTICLE XVI. If any ship of war or merchant vessel, of either of the contracting parties, should be wrecked on the coasts of the other, such ship or vessel, or any parts thereof, and all furniture and appurtenances belonging thereunto, and all goods and merchandise which shall be saved therefrom, or the produce thereof if sold, shall be faithfully restored to the proprietors, upon being claimed by them, or by their duly authorized agents: and if there are no such proprietors or agents on the spot, then said goods and merchandise, or the proceeds thereof, as well as all the papers found on board such wrecked ship or vessel, shall be delivered to the British or Hawaiian consul, in whose district the wreck may have taken place; and such consul, proprietors or agents shall pay only the expenses incurred in the preservation of the property, together with the rate of salvage which would have been payable in the like case of a wreck of a national vessel. The goods and merchandise saved from the wreck shall not be subject to duties unless cleared for consumption.

ARTICLE XVII. In order that the two contracting parties may have the opportunity of hereafter treating and agreeing upon such other arrangements as may tend still further to the improvement of their mutual intercourse, and to the advancement of the interest of their respective subjects, it is agreed that at any time after the expiration of seven years from the date of the exchange of the ratifications of the present treaty, either of the contracting parties shall have the right of giving to the other party notice of its intention to terminate articles 4, 5 and 6 of the present treaty; and that at the expiration of twelve months after such notice shall have been received by either party from the other, the said articles, and all the stipulations contained therein, shall cease to be binding on the two contracting parties.

ARTICLE XVIII. The present treaty shall be ratified, and the ratifications shall be exchanged at Honolulu in ten months or sooner, if possible.

In witness whereof, the respective Plenipotentiaries have signed the same, and affixed thereto their respective Seals.

Done at Honolulu, this tenth day of July, in the year of our Lord one thousand eight hundred and fifty-one.

[L.S.] ROBERT CRICHTON WYLLIE,

[L.S.] WILLIAM MILLER.

AND WHEREAS, we have fully examined all the points and articles thereof by and with the advice of Our Privy Council of State We have confirmed and ratified the foregoing Treaty and We do confirm and ratify the same, in the most effectual manner, promising on Our faith and word as King, for Us and Our successors, to fulfill and observe it faithfully and scrupulously in all its clauses.

In faith of which We have signed this ratification with Our own hand, and have affixed thereto the great seal of Our Kingdom.

Given at Our Palace at Honolulu, the 6th day of May, in the year of our Lord one thousand eight hundred and fifty-two, and in the twenty-seventh of Our reign.

[L.S.] KAMEHAMEHA

KEONI ANA

EXCHANGE OF RATIFICATIONS,—The undersigned, having met together for the purpose of exchanging the ratifications of a Treaty of Friendship, Commerce and Navigation between Her Majesty the Queen of the United Kingdom of Great Britain and Ireland, and His Majesty the King of the Hawaiian Islands concluded and signed at Honolulu on the tenth day of July, 1851; and the respective ratifications of the said instrument having been carefully compared, and found to be exactly conformable to each other, the said exchange took place this day in the usual form.

In witness whereof, they have signed the present certificate of exchange, and have affixed thereto their respective Seals.

Done at Honolulu the sixth day of May, 1852.

[L.S.] ROBERT CRICHTON WYLLIE,

[L.S.] WILLIAM MILLER.

Appendix “IV”

HAWAIIAN
ALMANAC AND ANNUAL
FOR
1893.

A HANDBOOK OF INFORMATION

ON MATTERS RELATING TO THE HAWAIIAN ISLANDS, ORIGINAL
AND SELECTED, OF VALUE TO MERCHANTS,
TOURISTS AND OTHERS.

THOS. G. THRUM, COMPILER AND PUBLISHER.

Nineteenth Year of Publication.

Hawaiian Copyright by THOS. G. THRUM, December 29, 1892.

HONOLULU, H. I.:
PRESS PUBLISHING CO. STEAM PRINT.
1892.

HAWAIIAN REGISTER AND DIRECTORY FOR 1893.

The Court.

HER MAJESTY, LILIUOKALANI, *b.* September 2, 1838; succeeded to the Throne January 29, 1891, on the death of her brother, King Kalakaua; *m.* to his late Royal Highness Jno. Owen Dominis, Prince Consort, who was *b.* March 10, 1832, and *d.* August 27, 1891. Daughter of Kapaakea and Keohokalole.

Her Majesty the Dowager Queen KAPIOLANI, *b.* December 31, 1835.

Her Royal Highness the Princess VICTORIA-KAWEKIU-KAIULANI-LUNALILO-KALANINUI-AHILAPALAPA, *b.* October 16, 1875, daughter of Her late K. H. Princess Likelike and His Ex A. S. Cleghorn, K. G. C., Member of the Privy Council of State. Proclaimed Heir Apparent, to the Throne, March 9, 1891.

His Excellency ARCHIBALD SCOTT CLEGHORN, K. G. C., Gover or of Oahu and member of Privy Council of State. Father of the Heir Apparent.

Her Royal Highness VIRGINIA KAPOOLOKU POOMAIKELANI, *b.* April 7, 1839. Sister to the Queen Dowager.

His Royal Highness Prince DAVID KAWANANAKOA, son of H. R. H. Princess Kekaulike, *b.* February 19, 1868.

His Royal Highness Prince JONAH KUHIO KALANIANAOLE, son of H. R. H. Princess Kekaulike, *b.* March 28, 1870.

Her Majesty's Chamberlain, MAJOR JAS. W. ROBERTSON.

Her Majesty's Staff.

Cols C. P. Iaukea, J H Boyd, R Hoapili Baker W. H. Cornwell, J D Holt, Jr, H F Bertelmann J. T. Baker and E K Lilikalani.

The Cabinet.

Her Majesty, THE QUEEN.

Minister of Foreign Affairs, His Ex M P Robinson; Minister of the Interior, His Ex G N Wilcox; Minister of Finance, His Ex P C Jones; Attorney-General, His Ex C Brown.

Governors.

His Ex A S Cleghorn, Governor of Oahu.
His Ex T W Everett, Governor of Maui.
His Ex J T Baker, Governor of Hawaii.
His Ex W H Rice, Governor of Kauai.

Governor of Oahu's Staff.

Majors J W Robertson, Sam'l Nowlein.

Privy Council of State.

Her Majesty, THE QUEEN.

Hons. C R Bishop, A S Cleghorn, A F Judd, H A Widemann, H M Whitney, J A Cummins, G Rhodes, J M Smith, J S Walker, W J Smith, W F Allen, D Kahanu, J E Bush, C P Iaukea, G W Macfarlane, P P Kanoa, W D Alexander, E K Lilikalani, P Neumann, S Parker, J T Baker, R H Baker, S M Damon, J K Kaunamano, A N Tripp, J G Hoapili, F H Hayselden, W G Irwin, D H Nahinu, A Rosa, J B Atherton, J T Waterhouse, Jr, J Ena., W H Cornwell, R F Bickerton, C B Wilson, F S

Pratt, J O Carter, H R H, D Kawanakoa, S B Dole, G C Beckley, A Fernandez, P. Isenberg, Jr, Jno Richardson, J W Robertson. C P Iaukea, Secretary.

Legislative Assemblage, Session of 1893.

OFFICERS.

President..... Hon J S Walker
Vice-President..... Hon J Kauhane
Secretary..... C J McCarthy
Interpreter..... W L Wilcox
Sergeant-at-Arms..... F J Testa
Chaplain..... Rev J Waia mau
The Cabinet Ministers hold seats in the House ex-officio.

HOUSE OF NOBLES.

OAHU:

Hons. D W Pua, A P Peterson, C L Hopkins. Term expires Feb 1894.
Hons. J S Walker, C O Berger, Jno Ena. Term expires Feb 1896.
Hons. J A Cummins, J N S Williams, C B Maile. Term expires Feb 1898.

MAUI:

Hons R D Walbridge, W H Cornwell. Term expires Feb 1894.
Hons. H P Baldwin, W Y Horner. Term expires Feb 1896.
Hons. Jas Anderson, L A Thurston. Term expires Feb 1898.

HAWAII:

Hons. R R Hind, J G Hoapili. Term expires Feb 1894.
Hons. J Kauhane, J M Horner. Term expires Feb 1896.
Hons. Alex Young, Jos Mardsen. Term expires Feb 1898.

KAUAI:

Hon. P P Kanoa. Term expires Feb 1894.
Hon. Alex McBryde. Term expires Feb 1896.
Hon. A Dreier. Term expires Feb 1898.

REPRESENTATIVES.

OAHU:

Honolulu:—Hons. W C Wilder, J W Bipi-kane, C W Ashford, S K Aki, S K Pua.
Ewa:—Hon A Kauhi. Waialua:—Hon R W Wilcox. Koolau, J E Bush.

MAUI:

Lahaina:—Hon Wm White. Wailuku:—Hons W P Kanealii, W Edmonds. Makawao:—Hon J Kaluna. Hana:—Hon J K Iosepa. Molokai:—Hon T S Nahinu.

HAWAII:

Hilo:—Hons J Nawahi, K M Koahou, A Horner. Hamakua:—Hon J K Kaunamano. Kohala:—Hon G P Kama'oha. Kona:—Hon J H Waipuilani. Kau:—Hon J N Kapahu.

KAUAI:

Koloa:—Hon W O Smith. Waimea:—Hon J A Akina. Hanalei:—Hon A S Wilcox.

Department of Judiciary.

SUPREME COURT.

Chief Justice..... Hon A F Judd
First Associate Justice..... Hon R F Bickerton
Second Associate Justice..... Hon S B Dole

Clerk Judiciary Department..... Henry Smith

Circuit Judges.

First Judge 1st Circuit, Oahu.....
 Second Judge 1st Circuit, Oahu.....
 Second Circuit, Maui..... Hon A N Kepoikai
 3rd and 4th Circuits, Hawaii..... Hon S L Austin
 Fifth Circuit, Kauai..... Hon J Hardy

CLERKS OF SUPREME AND CIRCUIT COURTS:

H Smith.....ex officio
 1st clerk 1st Circuit, Oahu..... F. Wundenberg
 2nd clerk 1st Circuit, Oahu..... Geo Lucas
 Second Circuit, Maui..... Goodale Armstrong
 3rd and 4th Circuits, Hawaii..... Daniel Porter
 Fifth Circuit, Kauai..... R W T Purvis

INTERPRETERS, ETC.

Hawaiian..... W Luther Wilcox
 Chinese..... Li Cheung
 Portuguese..... J M Vivas
 Stenographer..... J W Jones

District Magistrates.

OAHU.

Wm Foster..... Honolulu
 Ewa
 J K Kupau..... Waianae
 J Kaluhi..... Koolauloa
 S H Kalamakee..... Waiialua
 F Pahia..... Koolaupoko

MAUI.

W H Daniels..... Wailuku
 D Kahaulelio..... Lahaina
 Chas Copp..... Makawao
 J H S Kaleo..... Hana
 J K Piimanu..... Kipahulu, Hana
 M Kealoha..... Honuaula
 D Kalaokalani..... Molokai
 S Kahoohalahala..... Lanai

KAUAI.

S R Hapuku..... Lihue
 J W Kala..... Koloa
 R Puuki..... Hanalei
 J K Kapaniaia..... Waimea
 J W Iota..... Kawaihau

HAWAII.

G W A Hapai..... 1st District, Hilo
 Jos Perisson..... 2nd District, Hilo
 R H Atkins..... North Kohala
 S H Mahuka..... South Kohala
 E W Barnard..... North Hilo
 Edwin Thomas..... Hamakua
 Jas M Kauwila..... Puna
 J H S Martin..... West Kau
 Kekani Pa..... East Kau
 S B Kaalawamaka..... North Kona
 S M Kekoa..... South Kona

Department of Foreign Affairs.

Minister of Foreign Affairs. His Ex M P Robinson
 Secretary of Department..... F P Hastings
 Clerks of Department, W H Wright, Ed Stiles,
 H R H D Kawanakoa.

Diplomatic Representatives Accredited to the Court of Hawaii.

United States—His Ex John L Stevens, Envoy
 Extraordinary and Minister Plenipotentiary;
 residence, Nuanu Avenue.
 Portugal—Senhor A de Souza Canavaro, Charge
 d'Affaires and Consul-General; residence, Bere-
 tania street.

Great Britain—His Ex J H Wodehouse, Minis-
 ter Resident; residence, Emma street.
 France—Mons G M G Bosseron d'Anglade, Con-
 sul Commissioner; residence, Beretania street.
 Chancellor, Mons A Vizzavona.
 Japan—Mons S Fugii, Diplomatic Agent and
 Consul General. Secretary, G Narita.

Foreign Consuls, Etc.

United States—Consul-General, H W Severance;
 Vice and Deputy Consul-General, W Porter
 Boyd.

Italy—F A Schaefer, (Dean of the Consular Corps)
 Chili..... F A Schaefer
 German Empire..... H F Glade
 Sweden and Norway..... H W Schmidt
 Denmark..... H R Macfarlane
 Peru..... Bruce Cartwright
 Belgium..... J F Hackfeld
 Netherlands..... J H Paty
 Spain—Vice-Consul..... H Kenjes
 Austro-Hungary..... H F Glade
 Russia, Acting Vice-Consul..... J F Hackfeld
 Great Britain, Vice-Consul..... T R Walker
 Mexico..... H Renjes
 (Attaches to Consulate: F Lanno, G Narita,
 H Ito.)

China—Commercial Agent, Goo Kim; Assistant
 Commercial Agent, Wong Kwai.

United States Cons'l'r Ag't, Hilo..... C Furneaux
 U S Consular Agent, Kahului..... A F Hopke
 U S Consular Agent, Mahukona..... C L Wight

Diplomatic and Consular Representatives of Hawaii Abroad.

In the United States.

United States—J Mott Smith, Envoy Extraordi-
 nary and Minister Plenipotentiary, Washington,
 D C.

New York—E H Allen, Consul-General.
 San Francisco—F S Pratt, Consul-General for
 the Pacific States: California, Oregon and
 Nevada and Washington. J B Maholin, Vice
 Consul General.

Philadelphia..... Robert H Davis, Consul
 San Diego, Cal..... Jas W Girvin, Consul
 Boston..... Lawrence Bond, Consul
 Portland, Or..... J McCracken, Consul
 Port Townsend, Wash..... James G Swan, Consul
 Seattle..... G R Carter, Consul

Mexico, Central and South America.

U S of Mexico, Mexico—Col W J De Gress, Con-
 sul. R H Baker, Vice-Consul.
 Manzanillo..... Robert James Barney, Consul
 Guatemala..... Henry Tolke, Consul
 Peru, Lima—R H Beddy, Charge d'Affaires and
 Consul-General.

Callao, Peru..... S Crosby, Consul
 Chile—Valparaiso. D Thomas, Charge d'Affaires
 and Consul-General.

Monte Video, Uruguay: Conrad Hughes, Consul
 Philippine Islands, Iloilo—George Shelmerdine,
 Consul.

Manila..... Jasper M Wood, Consul

Great Britain.

London..... A Hoffnung, Charge d'Affaires
 Secretary of Legation, S B Francis Hoffnung,
 Manley Hopkins, Consul.

Liverpool..... Harold Janion, Consul
 Bristol..... Mark Whitwell, Consul
 Hull..... W Moran, Consul
 Newcastle on Tyne..... E Biesterfeld, Consul

Falmouth..... C R Broad, Consul
 Dover (and the Cinque Ports), Francis William Prescott, Consul.
 Cardiff and Swansea..... H Goldberg, Consul
 Edinburgh and Leith..... E G Buchanan, Consul
 Glasgow..... Jas Dunn, Consul
 Dundee..... J G Zoller, Consul
 Dublin..... R Jas Murphy, Vice-Consul
 Queenstown..... Geo B Dawson, Consul
 Belfast..... W A Ross, Consul
 Cebu..... George E A Cadell, Consul

British Colonies.

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 Geo A Shaw, Vice-Consul.
 Montreal..... Dickson Anderson, Consul
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 Brisbane, Queensland... Alex B Webster, Consul
 Hobart, Tasmania, Captain Hon. Audley Coote, Consul
 Launceston..... Geo Collins, Vice-Consul
 Newcastle, N S W..... W H Moulton, Consul
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 Dunedin, N Z..... Henry Driver, Consul
 Hongkong, China..... Consul-General.
 Shanghai, China..... Hon J Johnstone Keswick.

France and Colonies.

Paris..... Alfred Houle, Charge d'Affaires and Consul-General; A N H Teyssier, Vice-Consul.
 Marseilles..... G du Cayla, Consul
 Bordeaux..... Ernest de Boisjac, Consul
 Dijon H..... Vielhouanne, Consul
 Libourne..... Charles Schoessier, Consul
 Tahiti, Papeete..... A F Bonet, Consul

Germany.

Bremen..... John F Muller, Consul
 Hamburg..... Edward F Weber, Consul
 Frankfort-on-Maine..... Joseph Kopp, Consul
 Dresden..... Augustus P Buss, Consul
 Karlsruhe..... H Muller, Consul

Austria.

Vienna..... V von Schonberger, Consul

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 Cadiz..... James Shaw, Consul
 Valencia..... Vicente Chust, Consul
 Malaga—F T De Navarra, Consul; F Gimenez y Navarra, Vice-Consul.
 Cartagena..... J Paris, Consul
 Las Palmas, Gran Canaria, Luis Facony Quevedo, Consul; J Bravo de Laguna, Vice-Consul
 Santa Cruz..... B M y Baitalier, Vice-Consul
 Arcife de Lanzarote—E Morales y Rodriguez, Vice-Consul.

Portugal and Colonies.

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 Oporto..... Narciso M Ferro, Consul
 Madeira..... F Rodrigues, Consul
 St Michaels..... A de S Moreira, Consul
 St Vincent, Cape de Verde Islands—C Martins Vice-Consul.

Italy.

Rome.... James Clinton Hooker, Consul-General
 Genoa..... Raphael de Luchi, Consul
 Palermo..... Ar gelo Tagliavia, Consul

Netherlands.

Amsterdam..... D H Schnull, Consul-General
 Dordrecht..... P J Bowman Consul.

Belgium

Antwerp..... Victor Forge, Consul-General
 Ghent..... E Coppieiers, Consul
 Liege..... Jules Blanpain, Consul
 Bruges..... Emile Van den Brande, Consul

Sweden and Norway.

Stockholm... CA Engalls, Acting Consul-General
 Christiania..... L Samson, Consul
 Lyskil..... H Bergstrom, Vice-Consul
 Gothenburg..... Gustav Kraak, Vice-Consul

Denmark.

Copenhagen....., Consul-General

Japan.

Tokio, His Excellency R Walker Irwin, Minister Resident.
 Hiogo and Osaka..... Samuel Endicott, Consul

Interior Department.

Minister of Interior..... His Ex G N Wilcox
 Chief Clerk of Department..... J A Hassinger
 Clerks—J H Boyd, M K Keohokalole, J L Aholo, S Mahaulu, Geo Ross, Edwd S Boyd.
 Electoral Registrar..... Wray Taylor
 Registrar of Conveyances..... Thos G Thrum
 Deputy Registrar..... Malcolm Brown
 Supt Public Works and C E..... W E Rowell
 Superintendent Water Works..... J C White
 Clerk of Water Works..... A Lucas
 Supt Electric Lights..... Jno Cassidy
 Road Supervisor, Honolulu..... W H Cummins
 Commissioner of Patents..... C T Gulick
 Physician Insane Asylum..... Dr A McWayne

Government Surveying Corps.

W D Alexander..... Surveyor-General
 J F Brown..... Assistant in charge of gov't lands
 C J Lyons..... Assistant in charge of office
 F S Dodge..... Assistant

Board of Immigration.

His Ex Hon G N Wilcox..... President
 Members—His Ex A S Cleghorn, Hon M P Robinson, Hon Joseph B Atherton, Jas B Castle, Esq, Jas G Spencer, Esq.
 Wray Taylor..... Secretary
 G O Nacayama... Inspector-in-Chief of Japanese Immigrants.

Board of Health.

President..... D Dayton
 Members: Hon S Parker, J O Carter, J T Waterhouse, J F Colburn.
 Secretary..... Chas Wilcox
 Agents..... C B Reynolds, G W C Jones, S Ku

GOVERNMENT PHYSICIANS.

OAHU—Honolulu, Dr H G McGrew; Waialua, Dr L F Alvarez; Waianae, Dr N Russel.
 KAUAI—Waimea, Dr D Campbell; Hanalei, ———, Puna, Dr St D G Waiters; Koloa, Dr Jared K Smith.

MAUI—Makawao, Dr C L Stow; Hana, Dr T Allen; Wailuku, Dr Geo Herbert; Lahaina, Dr C Davison.

HAWAII—Hamakua, Dr C B Greenfield; Hilo, Dr R B Williams; N Hilo, Dr L S Thompson; Kau, Dr C B Cooper; Kohala, Dr B D Bond; Kona, Dr H A Lindley.

ISLAND OF MOLOKAI, Dr A Mouritz. LEPER SETTLEMENT, Dr R Oliver.

Road Boards.

HAWAII.

Hilo..... J T Baker, J T Unea, W G Kaihenui.
North Hilo... A C Palfrey, L S Thompson, W S Walker.

Puna.....
Kau..... W K Moi, J Ikaika, K Kimokea
Hamakua..... A Lidgate, J H Kaumeleiau, C Williams.

N Kohala... E P Low, D H Kailau, D W Pue
S Kohala... W Hookuanui, W K Davis, J Maguire
N Kona... J Kaelemakule, J K Nahale, S B Kaalawamaka.
S Kona... D H Nahinu, K M M Hu, W Punikaia

MAUI.

Lahaina... R H Makekan, G Kauhi, S Kaluakini
Wailuku... A Barnes, H Center, E B Friel
Hana... D Center, J P Sylva, M H Reuter
Makawao... J Kalama, L A Andrews
Molokai... S K Kupihea, S Kekahuna, J H Mahoe

OAHU.

Honolulu... C B Dwight, A Fernandez, S M Kaaukai.
Koolaupoko... F Pahia, J H Kealo, E P Aikue.
Koolauloa... L J Aylett, S Kapu, L K Naone.
Waialua... E S Timoteo, S H Kalamakee, B Naukana.
Ewa and Waianae... L P Halualani, Poe, J Pinao

KAUAI.

Koloa... J K Smith, A Cropp.
Lihue... S W Wilcox, S G D Walters, J H K Kaiwi.
Kauai... S N Hundley, D Lovell, J W Lota
Hanalei... S Kanewanui, G W Mahikoa, E Kuapuhi.
Waimea... J K Kapuniai, T Brandt, J Kamalinui
Niihau... M W Keale, J B Kaomea, A W Kawaiula

Commissioners of Crown Lands.

His Ex M P Robinson, His Ex C Brown, Col C P Iaukea.
Col C P Iaukea..... Agent

Commissioners of Boundaries.

Hawaii..... F S Lyman
Maui, Molokai and Lanai... S F Chillingworth
Oahu..... Wm Foster
Kauai..... J Hardy

Commissioners of Fences.

HAWAII.

Hilo..... B Brown.
Hamakua.....
North Kona... G McDougall, E Kahulanui, J K Nahale.
South Kona... M Barrett, J W Smith S Keku-
mano.
North Kohala... H L Holstein, R Hind, Jr.
South Kohala... S H Mahuka
Kau... D W Kaemoku, C Meinecke, N C Haley

MAUI.

Lahaina... K Nahaolelua, E S Kaiue, _____
Wailuku... W A McKay, N Kepoikai, W B Keanu.
Makawao..... R von Tempsky, E Hele-
kunihi.

Hana... O Unna, J Nakila, P K Kaumakaole
Molokai... D Kailua, J Kaoo, J H Mahoe

OAHU.

Kona... D Kahanu, P Jones, W S Wond
Ewa and Waianae... S Andrews, J Kekahuna, H Kapu.

Waialua... H Wharton, J Amara, J F Anderson.
Koolauloa... J Kaluhi, J L Naili, W C Lane
Koolaupoko... G Barenabe, M Rose

KAUAI.

Kauai... J P Kaumualii, Napalehua, J M Kealoha.
Koloa and Lihue... S Kaiu, E Kopke, J Gandall

Agents to Grant Marriage Licences.

Hawaii—

Hilo... J Kanaeholo, B Naaikauna, L Severance,
D H Hitchcock, L Kaapa, W Nailima
E W Barnard, J M Kauhi, S K Pookalani.
Hamakua... J N Haena, S B Kaleo, M
Beniamina, W A Mio, J Kanakaoluna.
North Kohala... Jno Nalii, E de Harne, D S
Kahookano, J S Smithies, K Kaai.

South Kohala... James Bright
North Kona... J Kaelemakule
South Kona... Jos Kaeo, J W Maele, S W Kino,
W J Wright, Jno Nahinu.

Puna... D Kapela
Kau... T C Wills, C Meinecke

Maui—

Wailuku... Chas Wilcox, J Haole, A N Kepoi-
kai, P Pakualani, J Kealoalii.

Lahaina... D Kahaulelio
Makawao... H P Keliikipi, H Kawainaka, Jas
Anderson, M Naaieono.

Hana... P Momoa, S W Kaai, D Napihao, J
Nakila, Jr, C Andrews, P H Kaumakaole,
Kaanapali... S M Sylva
Molokai... R W Meyer, D Kalua, K Kainuwai.
J H Babcock.

Lanai.....

Oahu—

Kona... W J Smith, C T Gulick, J H Boyd, P
Jones, J H Thompson.

Koolaupoko... E P Aikue
Koolauloa... W C Lane, J L Naili, L B Nainoa
Ewa and Waianae... J Kahalualani, D Malo
Waialua... J F Anderson

Kauai—

Koloa... A W Maioho, J Kala
Lihue... J H K Kaiwi
Kauai... W H Williams

Hanalei... Naohenui, J Kakina, Kaumeheiva,
J H Barenaba, E Kuapuhi.

Waimea... S E Kaula, E L Kauai, D Kua.
Niihau... F Sinclair, G S Gay

Commissioners of Private Ways and Water Rights.

HAWAII.

Hilo..... J T Brown
Hamakua.....
North Kohala... E C Bond
South Kohala... Z Pakiki
Kau... J H S Martin
Puna... A W Maioho

MAUI.

Lahaina.....M Makalua
 Wailuku.....S E Kaiue
 Makawao.....E Helekunihi
 Hana.....S W Kaai
 Kaanapali.....J A Kaukau
 Molokai.....D Kailua

OAHU.

Kona.....Mrs E M Nakuina
 Koolaupoko.....G Barenaba
 Koolauloa.....J Kaluhi
 Waiialua.....J Amara
 Ewa and Waianae.....J Kekahuna

KAUAI.

Koloa and Lihue.....S R Hapuku
 Waimea.....E L Kauai
 Hanalei and Kawaihau.....S U Kaneole

Agents to Take Acknowledgments to Instruments.

ISLAND OF OAHU.

Honolulu..M Brown, F M Hatch, W A Whit-
 ing, A S Hartwell, V V Ashford, F W Mac-
 farlane, J M Vivas, P Jones, W L Wilcox,
 W L Holokahiki, J M Kaneakua, S M Kaau-
 kai, D Dayton, W C Parke, H Holmes.
 Ewa.....L K Halualani
 Waianae.....J K Kekahuna
 Waiialua.....S N Emerson, S K Mahoe
 Koolauloa..W C Lane, H Kauaihilo, E P Aikue
 Koolaupoko.....A Ku

ISLAND OF MAUI.

Lahaina.....H Dickenson.
 Kaanapali.....D M Kalama
 Honuaula.....S P Halama
 Wailuku..T W Everett, W S Maule, G P Wilder,
 A N Keipoikai.
 Makawao.....S F Chillingworth, J Kalama,
 J Kamakele.
 Hana.....J Grunwald, J Gardner, S W Kaai
 Kaupo.....J Kawaiiaea
 Koolau.....Jas Saunders
 Kipahulu.....J Nakila, Jr

MOLOKAI AND LANAI.

Molokai—Kala, R W Meyer, Pukoo, S P Ku-
 pihea; Halawa, M Kane; Kalaupapa, Ambrose
 Hutchinson, D H Pierce.
 Lanai.....

ISLAND OF HAWAII.

N Kohala..D S Kahookano, J W Moanau'i, C
 H Pulaa.
 S Kohala.....F Spencer, Geo Bell, Miss E W
 Lyons.
 Hamakua—J W Leonhart, T P Kaeeae, Chas
 Williams.
 Hilo..W C Borden, G W A Hapai, A B Loeben-
 stein, S W Pa, D I Wailani, J T Unea, Jas
 Mattoon.
 Puna.....J Kauwila
 Kau.....C Meinecke, W Kaaemoku, S Patten
 S Kona.....J W Maele
 N Kona.....D Alawa, J W H I Kihe

ISLAND OF KAUAI.

Koloa.....E Strehz
 Waimea.....L H Stolz, E L Kauai
 Lihue.....S W Wilcox, J B Hanaike
 Hanalei.....J C Long, J B Alexander, J Radway
 Kawaihau.....L K Kaumualii, J M Kealoha
 Niihau.....J B Kaomea

Inspectors of Animals.

Oahu.....W T Monsarratt, V S, P Isenberg Jr.
 Hawaii..W H Shipman, A Wall, C E Richardson
 Maui.....W Marshall, S F Chillingworth,
 Kauai.....S Hundley, L Kahlbaum

Notaries Public.

Hawaii..D Porter, E W Barnard, A E Hitch-
 cock, Thos Aiu, J Kaeo, W Kaaemoku, W J
 Wright S H Haaheo, J S Smithies, W L
 Eaton, S Haanio, Jr, Jas Bright, I K Kekaula,
 I H Sherwood, E E Richards, G P Tulloch,
 W P Fennel, C Williams, D H Nahinu, Z Paa-
 kiki, J K Naeole, S W Kekuwa.
 Maui.....J P Silva, C H Dickey, W F Moss-
 man, M Makalua, E Helekunihi, E Lililehua,
 J Richardson, P K Kauimakaole, W P Haia,
 S E Kaiue, E B Friel, P M Kaluna, F W
 Hardy, J H Babcock.
 Oahu..J H Paty, C T Gulick, S B Dole, Jas M
 Monsarratt, M Brown, T W Hobron, V V Ash-
 ford, W Foster, C L Carter, J L Kaulukou, N
 M Lowrey, J A Magoon, G K Wilder, W C
 Achi, J M Camara Jr, S K Ka-ne, C W Ash-
 ford, E Johnson, F J Testa, J A Hassinger, C
 F Peterson, D Lamb, C E Vida, H Lose, A
 Rosa, J H Thompson, J H Kahookano, N Fer-
 nandez, J H Paele, H Holmes, W L Peterson,
 J W Luning, J H Nakookoo, A M Brown, J
 K Kaupu, A Perry.
 Kauai..L H Stolz, J C Long, J A Akina, J H
 Kawelo, Jno M Kealoha.

Agents to Acknowledge Contracts for Labor.

Oahu—Honolulu, C T Gulick, J A Hassinger, J
 W Robertson, Samuel Kuula, Chas Phillips,
 Moses Keliiaa, John Lucas, W S Wond, W
 H Tell, F S Lyman Jr, J E Brown, T N
 Starkey, F Godfrey J H Thompson.
 Waiialua—C H Kalama, S N Emerson, S K
 Mahoe, H N Kahulu.
 Koolauloa—M Makuuau, W C Lane, M Ka-
 anuu.
 Koolaupoko.....G Barenaba, P E Aikue
 Ewa and Waianae..J D Holt, J K Kaanaana,
 J Kekahuna, J Kahoa.
 Hawaii..Hilo, L Severance, L E Swain, A B
 Loebenstein, D B Wahine.
 N Kona.....J G Hoapili, J W Smith
 S Kona.....J Nahinu, W J Wright
 Hamakua...J P Leiahi, Kim, J Waiohinu, C
 Williams, J L Kanakaoluna.
 N Kohala..H Rickard, D S Kahookano, J W
 Moanau'i, W L Eaton, G P Tulloch, C J
 Falk, G H Kaailau.
 S Kohala.....Geo Bell, Jas Bright, J Jones
 Kau...W Kaaemoku, R Zeigler, J C Searle,
 C Thompson, T P Harris.
 Puna.....J N Kamoku
 Maui—Lahaina..K Nahaolelua, S L Kalaikini,
 J Kulailua, M Makalua, G Kaluakini, T C
 Forsyth.
 Wailuku..J Richardson, P S Kalama, W S
 Maule, S E Kaiue, C L Kookoo, S E Kalei-
 kau, J Haole, E R Biven.
 Makawao..J K Smyth, Keliikipi, P Keaupuni
 Hana..F Wittrock, P Kaiumakaole, Kaehe,
 Jr, B K Kaiwiae, J Murdock, J Hakila, J
 P Sylva.
 Molokai.....Geo Kekipi, S K Piiapoo

Kauai—Koloa, E Strehz, H C Norton, E Kaaloa
Lihue, J B Hanaïke, C H Willis, H K Kahale
Hanalei, J W Loka, J Kakina, J Kukuia, J H
Mahoe, J B Alexander.
Waimea, J H Kapukui, S E Kaula, I H
Kaaupwai.
Kawaihau, E Kaiu, J M Kealoha
Niihau, J B Kaomea

Department of Finance.

Minister of Finance, His Ex P C Jones
Registrar of Public Accounts, G E Smithies
Auditor General, Geo J Ross
Collector General of Customs, A S Cleghorn
Clerk of Registrar, C A Widemann
Tax Assr and Collr, Oahu, C N Spencer
" " Maui, C H Dickey
" " Hawaii, H C Austin
" " Kauai, J K Fariey
Collector Port of Hilo, J Stuppelbeen
Collector Port of Kahului, E Hoffmann
Collector Port of Lahaina (ex-officio) F H Hayselden.
Collector Port of Mahukona, J S Smithies
Collector Port of Kealahou, E Strehz
Collector Port of Kawaihau, E Strehz
Port Surveyor, Kahului, W S Maule
Port Surveyor, Hilo, G Nakapuahi

Customs Department, Honolulu.

Collector, A S Cleghorn
Deputy Collector, G E Boardman
Bookkeeper, O Stillman
Statistical Clerks, Wm Chamberlain, C K Stillman, C E Coville, J B Gibson.
Store Keeper, F B McStocker
Assistant Store Keeper, E Langley
Harbor Master, Capt A Fuller
Pilots—Captains A McIntyre, P P Shepherd, J C Lorenzen
Port Surveyor, C L Crabb
Guards—J Crowder, G Parminter, E Devauchelie
R W Holt, W H Aldrich, C H Clark.

Post Office Department.

Walter Hill, Postmaster-General
J G Rothwell, Book-keeper and Cashier
E Wodehouse, Savings Bank Department
F B Oat, Money Order Department
G E Thrum, General Delivery Department

Department of Attorney-General.

Attorney-General, His Ex C Brown
Deputy Attorney-General, G K Wilder
Marshal of the Hawaiian Islands, C B Wilson
Deputy Marshals, J A Mehrrens
Clerk to Marshal, H M Dow
Sheriff of Hawaii, E G Hitchcock
Sheriff of Maui, F H Hayselden
Sheriff of Kauai, S W Wilcox
Jailor of Oahu Prison, A N Tripp

Oahu—Deputy Sheriffs, Ewa, W S Wond; Waianaë, S K Hui; Waialua, J Amara; Koolauloa, H Kawaihilo; Koolaupoko, E P Aikue.

Kauai—Sheriff, S W Wilcox; Deputy Sheriffs: Lihue, C H Willis; Koloa, E Kaaloa; Waimea, L H Stolz; Hanalei, W E H Deverill, Kawaihau, S Kaiu.

Molokai—Deputy Sheriff, Pukoo, E Lililehua.

Maui—Sheriff, F H Hayselden; Deputy Sheriffs, Lahaina, R P Hose; Wailuku, S F Chillingworth; Makawao, Lorrin Andrews; Hana, M H Reuter.

Hawaii—Sheriff, E G Hitchcock; Deputy Sheriffs, North Hilo, L E Swain; Hamakua, J W Moanali; South Kohala, W Hookuanui; North Kohala, Chas Pulaa, North Kona, J K Nahale; South Kona, Lakalo; Kau, W J Yates; Puna, J E Eldarts.

Board of Prison Inspectors.

Jas G Spencer, J F Colburn, W A Whiting.

Board of Education.

President, Chas R Bishop
Members—W D Alexander, W W Hall, S M Damon, W Hill.
Inspector General of Schools, A T Atkinson
Secretary, W J Smith
Assistant, G C Potter

School Agents in Commission.

HAWAII.

Hilo, L Severance
Puna, J E Eldarts
Kau, C Meinecke
North and South Kona, J D Paris, Jr
South Kohala, Miss E W Lyons
North Kohala, Dr B D Bond
Hamakua, C Williams

MAUI.

Lahaina and Lanai, H Dickenson
Wailuku, A Barnes
Hana, F Wittrock
Makawao, C H Dickey
Molokai, R W Meyer

OAHU.

Honolulu, W J Smith
Ewa and Waianaë, W J Smith
Waialua, J F Anderson
Koolauloa, W C Lane
Koolaupoko, (acting) W J Smith

KAUAI.

Waimea and Niihau, T H Gibson
Koloa, Lihue, J K Burkett
Hanalei, W E H Deverill
Kawaihau, G H Fairchild

Chamber of Commerce.

President, C R Bishop
Vice-President, F A Schaefer
Secretary and Treasurer, J B Atherton

Board of Underwriters—Agencies.

Boston, C Brewer & Co
Philadelphia, C Brewer & Co
New York, A J Cartwright
Liverpool, T H Davies & Co
Lloyds, London, T H Davies & Co
San Francisco, H Hackfeld & Co
Bremen, Dresden, Vienna, F A Schaefer

Honolulu Board of Underwriters.

F A Schaefer, President
J H Paty, Vice-President
C O Berger, Secretary and Treasurer

Packet Agencies.

Boston Packets..... C Brewer & Co
 Planters' Line, San Francisco..... C Brewer & Co
 Pioneer, Liverpool..... T H Davies & Co
 Merchants' Line, San Francisco..... Castle & Cooke
 New York Line..... Castle & Cooke
 Oceanic S S Co's Line..... W G Irwin & Co
 Pacific Mail S S Company..... H Hackfeld & Co
 Oriental and Oceanic S S Co..... H Hackfeld & Co
 Bremen Packets..... H Hackfeld & Co
 Hawaiian Packet Line S F..... H Hackfeld & Co
 Glasgow and Honolulu..... F A Schaefer & Co

Honolulu Fire Department.

Organized 1851. Biennial Election of Engineers
 First Monday in December.

Officers for 1890-92:

Chief Engineer..... Julius Asch
 First Assistant Engineer..... Jas H Hunt
 Second Assistant Engineer..... D L Kalawaia
 Secretary and Treasurer..... Henry Smith
 Fire Marshal and Survey Engineer..... Jno Neil
 Honolulu Engine Company No 1 (steam) formed
 1850, organized July 18, 1855. Annual election
 of officers, first Wednesday in July.
 Mechanic Engine Company No 2 (steam) organ-
 ized December, 1850, admitted February 3,
 1850. Annual election of officers, first Wednes-
 day in February.
 Hawaii Engine Co No 4 (steam) organized
 February, 1861. Annual election of officers, first
 Tuesday in February.
 China Engine Company No 5 (steam), organized
 February, 1879.
 Protection Hook and Ladder Company No 1,
 re-organized September, 1857. Annual election
 of officers, first Monday in September.
 Fire Police, Captain T E Krouse.

Fire Wards of Honolulu.

No. 1—Bounded by School, Likelike, Judd and
 Punchbowl streets.
 No. 2—Bounded by Beretania, Liliha, School
 and Fort streets.
 No. 3—Bounded by King, Beretania and Fort
 streets.
 No. 4—Bounded by Water Front, King and Fort
 streets.
 No. 5—Bounded by Water Front, Fort, King
 and Richard streets.
 No. 6—Bounded by King, Fort, Beretania and
 Richard streets.
 No. 7—Bounded by Beretania, Fort, School and
 Punchbowl streets.
 No. 8—Bounded by Water Front, Richards,
 Beretania and Punchbowl streets.
 No. 9—Bounded by Water Front, Punchbowl
 and Victoria streets.
 No. 10—Bounded by King, Victoria and Piiko'
 streets.
 No. 11—Bounded by Piikoi, Wilder avenue and
 Punahou streets.
 No. 12—Beyond Punahou street.
 No. 13—The Harbor.

Queen's Hospital.
 ERECTED IN 1860.

President..... Her Majesty
 Vice-President..... C R Bishop
 Sec'y..... F A Schaefer | Treas..... J H Paty
 Auditor..... J S Walker
 Physicians..... G P Andrews, C B Wood
 Executive Committee—C R Bishop, J H Paty,
 F A Schaefer, A S Cleghorn.

Hawaiian Historical Society.

Organized Jan., 11, 1892.

President..... Hon C R Bishop
 Vice-President..... J S Emerson
 Recording Secretary..... Rev C M Hyde, D.D.
 Corresponding Secretary..... Prof W D Alexander
 Treasurer..... G P Castle
 Librarian..... Rev R R Hoes, U.S.N.

American Relief Fund.

Organized 1864. Meets annually February 22
 President.....
 Secretary and Treasurer..... C R Bishop

British Club.

Organized 1852. Premises on Alakea Street, two
 doors below Beretania.

President..... A S Cleghorn
 Sec'y..... F M Swanzy | Treas..... J G Spencer
 Managers—A S Cleghorn, W A Whiting, F M
 Swanzy, J G Spencer, A Jaeger, Dr Robt
 McKibbin, H Focke.

British Benevolent Society.

Organized 1860. Meets annually April 23.
 President..... J H Wodehouse
 Vice-President..... Rev A Mackintosh
 Sec'y..... F M Swanzy | Treas.....

German Benevolent Society.

Organized August 22, 1856.

President..... J F Hackfeld
 Secretary..... John F Eckart
 Treasurer..... F Klamp

Portuguese Ladies' Benevolent Society.

Organized December, 1886.

President.... Mrs Cannavaro, Mrs W G Irwin,
 Mrs C M Hyde
 Vice-Presidents.....
 Secretary..... Mrs Wm Foster
 Treasurer..... E Hutcheson

The St. Antonio Benevolent Society.

Organized 1876: Incorporated 1890.

President..... J M Camara, Jr
 Vice-President..... J B Vieira
 Secretary..... J S Ramos
 Treasurer..... C L Brito

**Portuguese Mutual Benefit Society of Ha-
 waii.**

Organized Jan. 1882: Incorporated 1887.

President..... J M Vivas
 Vice-President..... J G Silva
 Secretary..... M Gosmao Silva
 Treasurer..... A G Silva, Jr

Stranger's Friend Society.

Organized 1852. Annual Meeting in June.

President..... Mrs W F Allen
 Vice-Presidents..... Mrs A Mackintosh, Mrs T H
 Hobron.
 Secretary..... Mrs S M Damon
 Treasurer..... Mrs E W Jordan
 Directress..... Mrs S H Dowset,

Mission Children's Society.

Organized 1851. Annual Meeting in June.
 President..... W R Castle
 Vice-President..... Mrs S B Dole
 Recording Secretary..... W J Forbes
 Cor Secretary..... Mrs L B Coan
 Elective Members..... Mrs A S Hartwell, Dr N B
 Emerson.
 Treasurer..... W F Frear

Board of Hawaiian Evangelical Association.

Originally organized 1823.
 Constitution revised 1863. Annual meeting June
 President..... Hon A F Judd
 Vice-President..... H Waterhouse
 Corresponding Secretary..... Rev O P Emerson
 Recording Secretary..... Rev C M Hyde, D D
 Treasurer, W W Hall | Auditor, J B Atherton

Woman's Board of Missions.

Organized 1871.
 President..... Mrs C M Hyde
 Recording Secretary..... Mrs S E Bishop
 Home Cor Sec'y..... Mrs G P Castle
 Foreign Cor Sec'y..... Mrs E H McCully
 Treasurer..... Mrs B F Dillingham
 Auditor..... W W Hall

Sailors' Home Society.

Organized 1853. Meets annually in December.
 President..... C R Bishop
 Secretary, F A Schaefer | Treasurer, J H Pacy
 Ex Com, S M Damon, J B Atherton, C M Cooke

Missionary Gleaners—Branch of Woman's Board.

President..... Mrs E Jones
 Vice-President..... Miss C Gilman
 Rec Secretary..... Miss E R Hopper
 Cor Secretary..... Mrs E C Damon
 Treasurer..... Mrs T W Hobron
 Directress..... Miss H S Judd

Woman's Christian Temperance Union.

Organized Dec., 1884.
 President..... Mrs J M Whitney
 Vice-Presidents..... Mrs C M Hyde, Mrs E G
 Beckwith, Mrs E W Jordan.
 Recording Secretary..... Mrs R Jay Greene
 Corresponding Secretary..... Mrs E W Jordan
 Treasurer..... Mrs L B Coan
 Auditor..... W A Bowen

Young Men's Christian Association.

Organized 1869. Annual meeting in April.
 President..... Hon J B Atherton
 Vice-President..... C B Ripley
 Secretary..... W L Howard
 Treasurer..... H F Wichman
 General Secretary..... H W Peck

Library and Reading Room Association.

Organized March, Incorporated June 24, 1879.
 President..... A J Cartwright
 Vice-President..... M M Scott
 Secretar'..... H A Parmelee
 Treasure..... Miss M A Burbank

Hawaiian Rifle Association.

Organized December, 1885.
 President..... J H Soper
 Vice-President..... Hon S B Dole
 Secretary and Treasurer..... Walter E Wall

Honolulu Cemetery Association.

President..... Hon J I Dowsett
 Vice-President..... Hon J T Waterhouse, Jr
 Secretary..... J H Pacy
 Treasurer..... B Cartwright

Oahu College.

Located at Punahou, two miles east of Honolulu.
 F A Hosmer, A M..... President
 Mental and Moral Sciences.
 A B Lyons, M D, F C S, Chemistry and Natur-
 al Sciences.
 Miss L F Dale, Vocal and Instrumental Music
 and French.
 A W Crockett, A B., Latin and English Liter-
 ature.
 Miss M R Wing..... Greek, Rhetoric, etc
 J Q Wood, A B..... Mathematics, History and
 English.
 P H Dodge..... Drawing and Painting

Punahou Preparatory.

Miss Margaret Brewer, Principal: First and
 Second Grades.
 Miss Helen M Sorenson. Third and Fourth Grades.
 Miss Ella B Snow..... Fifth and Sixth Grades
 Miss Carrie A Gilman..... Seventh and Eighth
 Grades.
 Miss M Birch Fanning..... Kindergarten

Kamehameha Schools.

Located at Kalihi, west of Honolulu.
 Rev W B Oleson..... Principal
 U Thompson, Asst..... Instructor in Carpentry
 G H Babb Asst..... Instructor in Wood-turning
 R P Anderson..... Supt. Manual Labor
 L C Lyman..... Drawing, Supt. Machine Shop
 Mr Ruetsky, Assist..... Instructor in Printing
 Miss C Pope, Asst..... Instructor in Sewing
 Mrs W B Oleson..... Assistant

Kamehameha Preparatory.

Miss Malone..... Principal
 Misses E Halstead, A E Knapp, R Hoppin
 Assistants.

Publications.

The *Hawaiian Gazette*, issued weekly by the
 Hawaiian Gazette Co. on Tuesdays. H M
 Whitney, Manager.
 The *Daily Pacific Commercial Advertiser*, is-
 sued by the Hawaiian Gazette Co. every morn-
 ing (except Sundays). H N Castle, Editor; H
 M Whitney, Manager.
 The *Daily Bulletin*, issued every evening (ex-
 cept Sundays), by the Daily Bulletin Co. D
 Logan, Editor. Weekly issue on Tuesdays.
 The *Friend*, issued on the first of each month.
 Rev. S. E. Bishop, Editor.
 The *Anglican Church Chronicle*, issued on the
 first Saturday of every month. Rev. A. Mack-
 intosh, Editor.
 The *Paradise of the Pacific*, issued monthly. F
 Godfrey, Editor, J J Williams, Manager.
 The *Planters' Monthly*, issued on the 15th of
 each month. H. M. Whitney, Editor.
 The *Honolulu Diocesan Magazine*, issued quar-
 terly. Rt Rev Bishop Willis, Editor.

The *Kuokoa* (native), issued every Saturday morning, by the Hawaiian Gazette Co. J U Kawainui, Editor.

A *Uniao Lusitana-Hawaiiiana*, amalgamation of the *Luso* and *Aurora*, (Portuguese) issued every Saturday, C Pereira, Editor.

The *Hawaiian-Chinese News*, issued weekly, Ho Fon, Editor.

Hawaii Holomua (native), issued daily and weekly. J G M Sheldon, Editor.

The *Ka Oiaio* (native), issued every Friday, J E Bush Editor. Issues also a daily, *Ka Leo o ka Lahui* for native, and *The Voice of the Nation* for English readers.

Chinese Times, issued weekly, Chang Tin Sang, Editor.

The *Japanese Weekly News*, issued Mondays in the Japanese language. B Onoma, Editor.

The Liberal, issued semi-weekly, part English and part Hawaiian. Hon R W Wilcox, Editor.

Handicraft, issued monthly during the school year at the Kamehameha School. Rev W B Oleson, Editor.

A *Sentinella* (Portuguese), issued weekly on Saturday. J M Vivas, Editor.

HAWAIIAN ALMANAC AND ANNUAL, issued the latter part of December for the following year. Thos G Thrum, Editor and Publisher.

Lodges.

LODGE LE PROGRES DE L'OCEANIE, No 124, A F & A M; meets on King St., on the last Monday in each month.

HAWAIIAN, No 21, F & A M; meets in its hall corner Queen and Fort Streets, on the first Monday in each month.

HONOLULU CHAPTER, No 1, R A M; meets in the hall of Le Progres de l'Oceanie on the third Thursday of each month.

HONOLULU COMMANDERY NO 1 KNIGHTS TEMPLAR meets at the Lodge Room of Le Progres de l'Oceanie second Thursday of each month.

KAMEHAMEHA LODGE OF PERFECTION, No. 1, A & A S R; meets in the hall of Le Progres de l'Oceanie on the fourth Thursday of each month.

NUUANU CHAPTER OF ROSE CROIX, No 1, A & A S R; meets at the hall of Le Progres de l'Oceanie, first Thursday in the month.

ALEXANDER LIHOLIHO COUNCIL No 1, OF KADOSH; meets on the third Monday of alternate months from February.

EXCELSIOR LODGE, No 1, I O O F; meets at the hall in Odd Fellows' Building, on Fort St. every Tuesday evening.

HARMONY LODGE, No 2, I O O F; meets each Monday evening in Harmony Hall.

POLYNESIA ENCAMPMENT, No 1, I O O F; meets in Odd Fellows' Building, Fort street, first and third Fridays of each month.

PACIFIC DEGREE LODGE, No 1, DAUGHTERS OF REBEKAH; meets at Excelsior Hall, Fort street, second and fourth Fridays of each month.

OAHU LODGE No 1, K of P; meets every Wednesday at hall on Fort Street.

MYSTIC LODGE, No 2, K of P; meets every Thursday evening, at Harmony Hall.

SECTION No 225—ENDOWMENT RANK, K of P; meets on the second Saturday of January, July and December in the hall of Oahu Lodge.

MAILE LODGE, No. 4, KNIGHTS OF PYTHIAS; meets every Saturday night in Lyceum Build-

ing, Honokaa, Hawaii. Visiting brothers always welcome.

HAWAIIAN COUNCIL No 689, AMERICAN LEGION OF HONOR; meets on second and fourth Friday evenings of each month in Harmony hall.

OCEANIC COUNCIL, No 777, AMERICAN LEGION OF HONOR; meets on the first and third Thursdays of each month, at the K of P hall.

HAWAIIAN TRIBE, No 1, IMP. O R M; meets at the hall of Oahu Lodge, K of P, every Friday evening.

COURT LUNALILO, No 6600; A O of FORESTERS meets at hall of Oahu Lodge, K of P, on second and fourth Tuesdays of each month.

GEO. W DE LONG POST, No 45, G A R; meets the second Tuesday of each month at Harmony hall.

CAPT. COOK LODGE No. 353, ORDER SONS OF ST. GEORGE; meets at the K of P Hall, Fort St., every Saturday evening.

Places of Worship.

CENTRAL UNION CHURCH (Congregational), corner of Beretania and Richards sts, Rev E G Beckwith, D.D., Pastor. Services every Sunday at 11 A M and 7:30 P M. Sunday School meets one hour before morning service. Prayer meeting Wednesday evenings at 7:30.

ROMAN CATHOLIC CHURCH, Fort Street, near Beretania; Rt Rev Gulstan F Ropert, Bishop of Panopolis; Revs Leonor and Clement, assisting. Services every Sunday at 10 A M, and at 4:30 P M. Low Mass every day at 6 and 7 A M. High Mass Sundays and Saints' days at 10 A M.

ST. ANDREW'S CATHEDRAL, Emma Square. First Congregation. Clergy: Rt Rev Bishop Willis, and Rev V H Kitcat. Services on Sunday: Holy Communion at 6:30 A M. Morning prayer, with sermon at 11 A M. Hawaiian Evensong 3:30 P M. Evening Prayer with sermon 7:30 P M. Holy Communion at 11 A M the last Sunday in each month. Sunday School 10 A M. Daily prayer at 7 A M.

Second Congregation, Rev A Mackintosh, Pastor. Services on Sunday: Morning prayer with sermon, 9:45 A M; Evening prayer with sermon 6:30 P M. Holy Communion first Sunday in month, 9:45 A M. Sunday School 10 A M. Evening prayer, with address every Friday, at 7:30 P M.

Chinese Congregation. Services on Sunday at 11 A M and 7:30 P M. Evening prayer every Wednesday, at 7:30 P M.

CHRISTIAN CHINESE CHURCH, Fort Street, F W Damon, acting Pastor. Services every Sunday at 10:30 A M and 7:30 P M. Prayer Meeting Wednesdays at 7:30 P M.

NATIVE CHURCHES.

KAWAIAHAO CHURCH (Congregational), corner of King and Punchbowl Streets, Rev H H Parker, Pastor. Services in Hawaiian every Sunday at 11 A M, and at 7:30 on Sunday evenings alternating with Kaumakapili. Sunday School at 10 A M. Prayer Meeting, Wednesday at 7:30 P M.

KAUMAKAPILI CHURCH (Congregational), Beretania street near Maunakea. Rev J Waiamau, Pastor. Services in Hawaiian every Sunday at 11 A M, and at 7:30 P M on Sunday evenings alternating with Kawaiahao. Sunday School at 10 A M. Prayer Meeting every Wednesday at 7:30 P M.

Appendix “V”

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PROGRAMME

for

Patriotic Exercises in the Public Schools

Territory of Hawaii,

Adopted by the Department of Public Instruction.

1906

PROGRAMME FOR PATRIOTIC EXERCISES

I.

Formation and Salute to Flag.

- (a) At three minutes to nine o'clock the children assemble in front of the school, the classes forming a circle (or circles) about the flag pole or facing the building over which the stars and stripes are to float. The principal gives the order, "Attention!" or "Face!" The boys remove hats and the teachers, and pupils watch the flag hoisted by two of the older boys. When it reaches the top of the flag-pole, the principal gives the order, "Salute!" or three cheers may be given for the flag as it is being raised.

At nine o'clock the pupils march to their class rooms to the beating of a drum or to some march played by the pianist or school band.

On reaching their class rooms, the children may stand by their seats and repeat in concert the following salutation:

"We give our heads and our hearts to God and our Country! *One Country! One Language! One Flag!*"

(NOTE: The flag is dipped while the children raise the right hand, forefinger extended, and repeat the pledge. When they salute, the flag is raised to an upright position.)

- (b) All the children to be drawn up in line before the school building.

A boy and a girl each holding a medium-sized American flag, stand one on the right and one on the left of the school steps. Boy on the right and girl on the left. The flags should be held military style.

The children at a given signal by the principal or teacher in charge, file past the flags, saluting in correct military manner. The boys to the right and the girls to the left, entering and taking their positions in the school. The flag bearers enter last, and take their positions right and left of the principal, remaining in that position during the salutation, "We give our heads and our hearts to God and our Country! *One Country! One Language! One Flag!*"

The flag bearers place the flags in position at the head of the school. The boy and girl who carry the flags should be chosen from among the pupils for good conduct during the hours of school.

- (c) Pupils attention! at chord on piano or organ, or stroke of drum or bell.

The teacher will call one of the pupils to come forward and stand at one side of desk while the teacher stands at the other. The pupil shall hold an American flag in military style.

At second signal all children shall rise, stand erect and salute the flag, concluding with the salutation, "We give our heads and our hearts to God and our Country! *One Country! One Language! One Flag!*"

II.

Morning Prayer (in unison).

- (a) THE LORD'S PRAYER;

Or

- (b) Dear Lord we thank thee for the night
That brought us peaceful rest,
We thank thee for the pleasant light
With which our day is blessed;
We thank thee for our native land,
The dearest in the world;
We thank thee for our starry flag
For freedom's sake unfurled.

O, make us worthy, God, to be
The children of this land,
Give us the truth and purity
For which our colors stand,
May there be in us greater love
That by our lives we'll show
We're children true of God above
And our country here below.

Or

- (c) "Hawaii's land is fair,
Rich are the gifts we share.
This is our earnest prayer
 O Lord of Light,
That as a noble band
We may join heart and hand
Till all Hawaii's land
 Stands for the right."

P. H. DODGE.

III.
Patriotic Song.

Any one of following:

AMERICA;

STAR SPANGLED BANNER;

THE RED, WHITE AND BLUE;

BATTLE HYMN OF THE REPUBLIC;

RALLY ROUND THE FLAG;

YANKEE DOODLE;

HAIL COLUMBIA;

HOME, SWEET HOME;

COLUMBIA, THE GEM OF THE OCEAN;

GLORY—GLORY—HALLELUJAH;

MY OWN UNITED STATES;

JOHN BROWN'S BODY.

IV.

Patriotic Topics for Day.

(a) FORMAL TALK BY THE TEACHERS ON—

- 1.—Presidents and Famous Men ;
- 2.—Great Events in History and Science ;
- 3.—Current Events in United States ;
- 4.—Vivid descriptions (illustrated whenever possible) of Great Industries, Cities, Famous Localities, Physical and Climatic Conditions.

(b) QUOTATIONS OR RECITATIONS.

It is the idea that on each Monday morning a new text be introduced in a brief talk by the teacher, written on the board, and during the week repeated by the pupils each day.

QUOTATIONS.

Our parents are dear to us ; our children, our kinsmen, our friends are dear to us, but our country comprehends alone all the endearments of all.—*Cicero*.

“I was summoned by my country, whose voice I never hear but with veneration and love.”—*George Washington*.

The union of hearts, the union of hands,
And the flag of our Union forever.

—*G. P. Morris*.

And never shall the sons of Columbia be slaves,
While the earth bears a plant, or the sea rolls its waves.

—*Joseph Thrumbull*.

One flag, one land, one heart, one hand,
One nation ever more!

—*Holmes.*

Our fathers brought forth upon this continent a new nation, conceived in Liberty, and dedicated to the proposition that all men are created equal.—*Abraham Lincoln.*

Liberty and Union, now and forever, one and inseparable.—*Daniel Webster.*

Let our object be our country, our whole country, and nothing but our country.—*Daniel Webster.*

Our Country—to be cherished in all our hearts, to be defended by all our hands.—*Robt. C. Winthrop.* (Given as a toast in Faneuil Hall.)

Lose then the sense of your private sorrows and lay hold of the common good.—*Demosthenes.*

In peace there's nothing so becomes a man as modest stillness and humility; But when the blast of war blows in our ears, then imitate the action of the tiger.—*Shakespeare.*

You cannot, my lords, you *cannot* conquer America.—*Wm. Pitt, Earl of Chatham.*

If I were an American as I am an Englishman, while a foreign troop was landed in my country, I would never lay down my arms—never, never, never.—*Wm. Pitt, Earl of Chatham.*

What is the individual man, with all the good or evil that may betide him, in comparison with the good or evil which may befall a great country?—*Daniel Webster.*

I advise you not to believe in the destruction of the American nation. (Time of Civil War.)—*John Bright.*

I believe there is no permanent greatness to a nation except it be based on morality.—*John Bright.*

Our business is like men to fight. And hero-like to die.—*Wm. Motherwell.*

A star for every state and a state for every star.—*Robt. C. Winthrop.*

I call upon yonder stars which shine above us to bear witness—that liberty can never die.—*Victor Hugo.*

Four years ago, O Illinois, we took from your midst an untried man, and from among the people. We return him to you a mighty conqueror; not thine any more, but the nation's; not ours, but the world's.—*Henry Ward Beecher.* (On Lincoln).

If it be the pleasure of Heaven that my country shall require the poor offering of my life, the victim shall be ready at the appointed hour of sacrifice, come when that hour may.—
By *Daniel Webster.*

There's freedom at thy gates, and rest
For earth's downtrodden and opprest,
And shelter for the hunted head;
For the starved laborer, toil and bread.
(America). By *Wm. Cullen Bryant.*

We mutually pledge to each other our lives, our fortunes, and our sacred honor. (Declaration of Independence.)—
Thomas Jefferson.

Let us have peace.—*U. S. Grant.*

Fondly do we hope, fervently do we pray, that this mighty scourge of war may soon pass away.—*Abraham Lincoln.*

I was born an American; I live an American; I shall die an American; and I intend to perform the duties incumbent upon me in that character to the end of my career.—*Daniel Webster.*

Seek the forests where shone the sword of Washington.
What do you find? A place of tombs? No, A World.
Washington has left the United States as a trophy on his
battlefield.—*Chateaubriand*.

The man who loves home best and loves it most unselfishly,
loves his country best.—*J. G. Holland*.

I know not what course others may take; but, as for me,
give me liberty or give me death.—*Patrick Henry*.

Breathes there a man with soul so dead
Who never to himself hath said,
"This is my own, my native land!"
Whose heart hath ne'er within him burned
As home his footsteps he hath turned,
When wandering on a foreign strand?—*Sir Walter Scott*.

Ye people, behold, a martyr whose blood—pleads for
fidelity, for law, and for liberty.—*Henry Ward Beecher*.
(On Lincoln.)

Stand by the flag, all doubt and treason scorning,
Believe with courage firm and faith sublime,
That it will float until the eternal morning
Pales in its glories all the lights of time.

John Nicholas Wilder.

There is the national flag. He must be cold indeed who
can look upon its folds rippling in the breeze without pride
of country.—*Charles Sumner*.

We cannot honor our country with too deep a reverence; we
cannot love her with an affection too fervent; we cannot serve
her with faithfulness of zeal too steadfast and ardent.—
Thos. Smith Grimke.

My angel—his name is Freedom,
Choose him to be your king;
He shall cut pathways east and west
And fend you with his wing.

Let us animate and encourage each other, and show the whole world that a freeman contending for liberty on his own ground is superior to any slavish mercenary on earth.—*George Washington*. (In a speech to his troops before the battle of Long Island.)

——— that the nation shall, under God, have a new birth of freedom, and that government of the people, by the people, and for the people shall not perish from the earth.—*Abraham Lincoln*.

Proclaim liberty throughout the land to all the inhabitants thereof.—Inscription on Liberty Bell.

A man's country is not a certain area of land, but a principle, and patriotism is loyalty to that principle.—*Geo. Wm. Curtis*.

Through all history a noble army of martyrs has fought fiercely and fallen bravely for that unseen mistress, their country.—*Geo. Wm. Curtis*.

With malice towards none, with charity for all, with firmness in the right, as God gives us to see the right, let us strive on to finish the work we are in: to bind up the nation's wound; to care for him who shall have borne the battle, and for his widow and orphans; to do all which may achieve and cherish a just and lasting peace among ourselves and with all nations.—*Abraham Lincoln*.

The ends I aim at shall be my country's, my God's and truth's.—*Daniel Webster*.

I love my country's good, with a respect more tender, more holy and profound, than my whole life.—*Shakespeare*.

Be just, and fear not; let the ends thou aim'st at, be thy country's, thy God's and truth's.—*Shakespeare*.

"Then conquer we must, for our cause it is just,
And this be our motto,
In God is our trust."

RECITATIONS.

"The Eagle flew; the flag unfurled."

"Speed on our Republic."

"Landing of the Pilgrims."

"Our Chieftain, Washington."

"The Ballot Box."

"Old Liberty Bell."

"Paul Revere's Ride."

"Barbara Fritche."

"Liberty Hall."

"The Union," by Daniel Webster.

Liberty of the Press, by Col. E. D. Baker.

Bunker Hill Monument, by Webster.

Fourth of July, by Daniel Webster.

"Washington's Birthday."

In Favor Liberty, by Patrick Henry.

The Constitution and the Union, by Webster.

"God Wants the Boys and Girls."

"The Boy for Me."

"The Man with the Musket."

"Native Land."

Declaration of Independence.

Preamble of the Constitution.

(c) SPECIAL ANNIVERSARY DATE.

Following are suggestive dates. Have picture hung up before the pupils or sketched on the blackboard and as much said of his life and deeds as the time will allow.

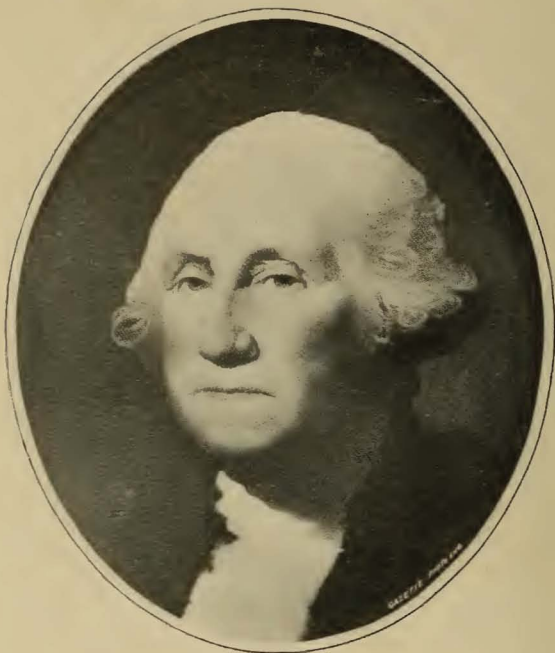
DATES.	SUBJECT.	REMARKS.
Jan. 18—	Daniel Webster	Born Jan. 18, 1782. Recite Bunker Hill Monument.
Jan. 29—	McKinley	Born Jan. 29, 1843. Sing "Lead Kindly Light."
Feb. 1—	Slavery abolished	Feb. 1, 1865. Sing "Battle Hymn of the Republic." Recite "Battle of Gettysburg."
Feb. 12—	Lincoln	Born Feb. 12, 1809. Tell anecdotes and recite "Battle of Gettysburg."
Feb. 21—	American Flag made from American Bunting	Tell about our great industries. Sing "Star Spangled Banner." Recite "Speed on the Ship."
Feb. 22—	Washington	Born Feb. 22, 1732. Tell stories. Recite "Our Chieftain, Washington."
March 4—	Presidents	Inauguration Day. Show pictures of the Presidents or sketch them on blackboards.
March 9—	Monitor and Merrimac	Battle March 9, 1862, when the men of the Monitor sang in the midst of the fight, "Yankee Doodle Dandy."
May 9—	John Brown	Born May 9, 1800. Sing "John Brown's Body." Tell the story of his life.

DATES.	SUBJECT.	REMARKS.
April 10—	“Home, Sweet Home”	The author, John Howard Payne, was born April 10, 1792. Sing the song. Tell stories of his life.
May 20 to 25—	The Flag	Joseph R. Drake wrote “America’s Flag.” Sing this song.
May 30—	Memorial Day	Sing “The Battle Hymn of the Republic.” Recite “Gettysburg.”
June 14—	Flag Day	Flag adopted June 14, 1777. Sing “Red, White and Blue” and “Star Spangled Banner.”
July 4—	Declaration of Independence	Read part of the Declaration of Independence.
Sept. 14—	“Star Spangled Banner”	Written by Francis Scott Key, Sept. 14, 1818. Sing this song. Recite “Barbara Fritche.”
Sept. 27—	Samuel Adams	Born Sept. 27, 1722. Read part of Declaration of Independence, as Adams was the chief man in securing the D. of I.
Oct. 12—	Discovery of America	Sing “O Columbia.” Recite “Native Land.”
Oct. 21—	“America”	Dr. Smith, the author, was born Oct. 21, 1808. Sing “America.”
Dec. 22—	Pilgrim Land	Recite “Landing of the Pilgrims,” Dec. 22, 1620.

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Appendix “VI”

HARPER'S WEEKLY

VOL. LI.

New York, Saturday, February 16, 1907

NO. 2617

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"THEY'LL DO"

HAWAII'S LESSON TO HEADSTRONG CALIFORNIA

HOW THE ISLAND TERRITORY HAS SOLVED THE PROBLEM OF DEALING WITH ITS FOUR THOUSAND JAPANESE PUBLIC-SCHOOL CHILDREN

By WILLIAM INGLIS

SPECIAL CORRESPONDENT FOR "HARPER'S WEEKLY"

HONOLULU, TERRITORY OF HAWAII, January 15, 1907.

THE American government in Hawaii has no trouble whatever in dealing with the Japanese pupils in the public schools. Nothing can be more startling to the observer who comes from the bubbling volcano of San Francisco school-politics than the ease with which the annoying race question is handled by intelligent Americans in this garden-spot of the Pacific. There are more than 4000 Japanese pupils here, as against a meagre ninety-three in San Francisco, yet there is no vexation.

There would be nothing to wonder at in the situation if most of the Japanese residents of Hawaii were people of culture and wealth, not competing with American labor. It is the status of the Mikado's subjects in these islands that forces one to admire the diplomacy with which an awkward problem has been handled. For the Japanese in Hawaii are nearly all of the coolie type. They are cheap workers, whether as laborers in the cane-fields or mechanics or artisans of any class. There is bitter strife between them and American labor. Strenuous efforts have been made to exclude Japanese laborers, to prevent Japs from working as mechanics, cabmen, or farriers; to prohibit them from owning drinking-saloons. The Palama, as the Japanese quarter in Honolulu is called, contains six times as many Asiatics as the Chinese quarter of New York, and the Japanese is very fond of driving dull care away with a glass; yet a most determined effort has been made to oust the little brown men from the profitable business of liquor-selling. An attempt was made, too, to compel the Japanese doctors who attend their countrymen here to take medical examinations in the English language, under penalty of not being allowed to practise in this Territory.

All of these anti-Japanese campaigns failed of success because the Territorial courts held that their basis was illegal, inasmuch as it was an invasion of treaty rights. I mention them merely to show how bitter and uncompromising has been the economic warfare upon the Japanese in these islands.

The great difference between the situation here and in California is that the Hawaiian-Americans have fought the Japanese bitterly but according to law and the treaty rights of the foreigners, while the San-Franciscans, with far less provocation, have airily disregarded both law and treaty in order to inflict upon Japan a gratuitous affront.

There are more than sixty thousand Japanese in the Hawaiian Islands. Nearly all of them are laborers on the sugar-plantations.

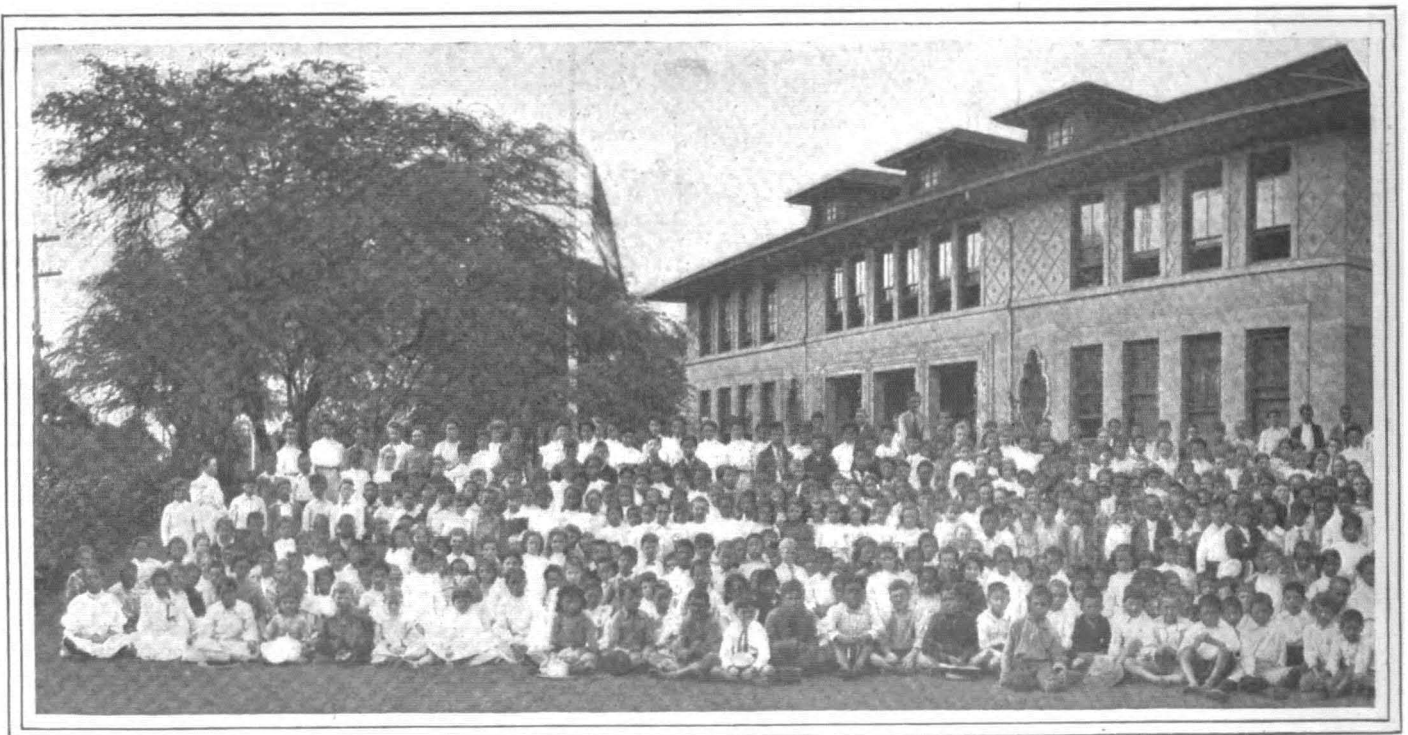
Many of them are married, and on every plantation you will find a quaint reproduction of a Japanese village, the houses very like those of the Orient, Japanese women in kimonos going about their daily tasks, and chubby-cheeked, brown-eyed little boys and girls very gravely beginning the solemn business of life.

Whether in town or country, these little folks work with an energy that amazes an American. Their parents want them to learn as much as possible about the history and literature of the land of their fathers; so all the Japanese boys and girls go to a Japanese school from seven o'clock until nine in the morning. Then they attend an American public school from nine o'clock until two in the afternoon. The moment they are free they hurry back to Japanese school and work there until five or six o'clock in the evening. Imagine a school day that lasts from seven in the morning until dark! Yet these brown children thrive on that system. It has been going on for ten years now, and it is impossible to find any record of shattered health or injured eyes as a result of this tremendous industry.

Down in old Mulberry Bend, New-Yorkers have a public school of which they are very proud, because in it the teachers receive young Italians, Greeks, Syrians, Arabs, Japanese, Chinese, Scandinavians, Turks, etc., as raw material and turn them out as a finished product of excellent American citizens. The school is unique in its mixture of races, and for that reason attracts a great deal of attention. In Honolulu that school would pass unnoticed, for in every school you will find little folk of a dozen races working amicably side by side. Such a thing as race prejudice is unknown.

Observe the remarkable mixture shown by the latest census of the schools of Hawaii, taken at the end of last June:

	Public.	Private.	Totals.
Hawaiian	4,045	800	4,845
Part Hawaiian.....	2,382	1,040	3,422
American	457	502	959
British	142	81	223
German	144	119	263
Portuguese	3,239	1,233	4,472
Scandinavian	63	38	101
Japanese	3,578	719	4,297
Chinese	1,489	603	2,092
Porto-Rican.....	338	338
Other Foreigners.....	242	104	346
Totals.....	16,119	5,239	21,358



The Pupils of the Kaahumanu Elementary Grades Public School at Honolulu

THIS PHOTOGRAPH, THE CONTINUATION OF WHICH WILL BE FOUND ON THE OPPOSITE PAGE, GIVES A COMPREHENSIVE IDEA OF THE MANY NATIONALITIES HAWAII HAS PEACEFULLY ACCOMMODATED IN THE CLASS-ROOMS OF HER SCHOOLS, AND HOW SHE HAS SET A LESSON FOR CALIFORNIA'S SCHOOL BOARD

Was there ever such a heterogeneous company since Babel? Yet they are all fused in the great retort of our American schools, and they are coming out good American citizens. Incidentally it may be remarked that the people of Hawaii are prouder of their schools than of anything else in their marvellously rich and beautiful islands. There are 154 public schools, with 435 teachers, and 58 private schools, with 261 teachers. The high schools send pupils to the leading colleges in the United States, and of these many have achieved distinction in letters and science.

In the Kaahumanu and Kaiualani public schools one finds the jumble of races hard at work. There is every hue of skin known to the human species except the black of the negro, which is conspicuously absent. At the same desk in the Kaiualani school a dainty little girl with pink cheeks, blue eyes, and hair of spun gold—the only native American in the school—was sitting beside a girl whose father was a white man and whose mother was Hawaiian. The half-caste child was dark as an Indian and her hair was long, straight, black and coarse as an Indian's. At the desk before these two sat two Japanese girls, about ten years old. They were demure little things in American clothes, very solemn and full of dignity. Their sparkling black eyes shone with keen speculation. A few feet away sat a Portuguese girl beside a Chinese girl who wore the loose silk jacket and flowing trousers of her native land.

The boys were a sturdy lot, and, in spite of the wide divergence of race types, one saw a great resemblance among them, the resemblance that comes of working at the same tasks, thinking the same thoughts, having the same duties, aims, ambitions, and rewards. This resemblance was much more marked among the boys than among the girls. The costumes were as various as the leaves in the forest, and very few of the children wore shoes. Every boy and every girl was scrupulously clean. Order in the schoolroom was perfect. There was no giggling or whispering nor any evidence of self-consciousness. The children regarded the visitor with a curiosity that was frank but well bred.

At the suggestion of Mr. Babbitt, the principal, Mrs. Fraser, gave an order, and within ten seconds all of the 614 pupils of the school began to march out upon the great green lawn which



A Group at the Honolulu High School

THREE PER CENT. OF THE PUPILS HERE ARE JAPANESE, THE IMPERATIVE REQUISITE FOR ADMISSION BEING A THOROUGH WORKING KNOWLEDGE OF ENGLISH

surrounds the building. Hawaii differs from all our other tropical neighbors in the fact that grass will grow here. To see beautiful, velvety turf amid groves of palms and banana-trees and banks of gorgeous scarlet flowers gives a feeling of sumptuousness one cannot find elsewhere.

Out upon the lawn marched the children, two by two, just as precise and orderly as you can find them at home. With the ease that comes of long practice the classes marched and counter-marched until all were drawn up in a compact array facing a large American flag that was dancing in the northeast trade-wind forty feet above their heads. Surely this was the most curious, most diverse regiment ever drawn up under that banner—tiny Hawaiians, Americans, Britons, Germans, Portuguese, Scandinavians, Japanese, Chinese, Porto-Ricans, and Heaven knows what else.

"Attention!" Mrs. Fraser commanded.

The little regiment stood fast, arms at sides, shoulders back, chests out, heads up, and every eye fixed upon the red, white, and blue emblem that waved protectively over them.

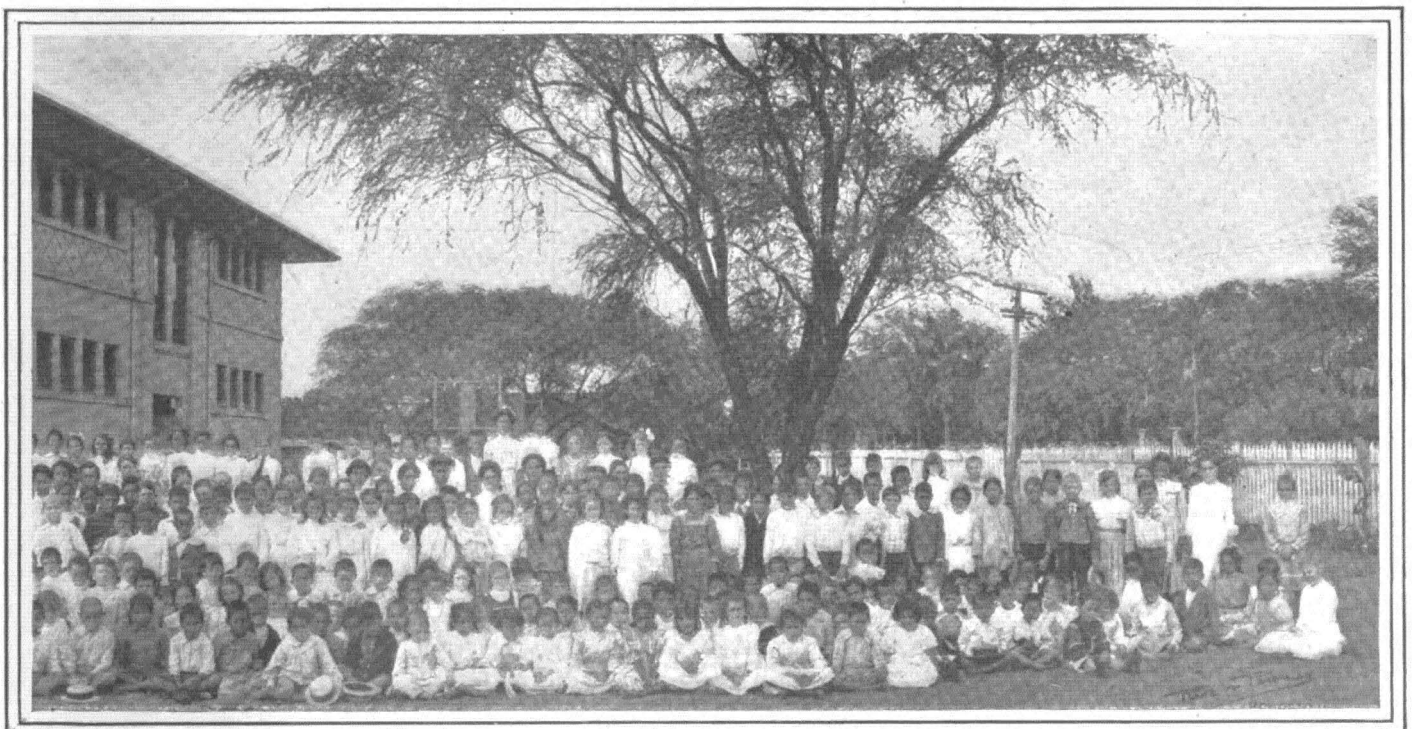
"Salute!" was the principal's next command.

Every right hand was raised, forefinger extended, and the six hundred and fourteen fresh, childish voices chanted as one voice:

"We give our heads and our hearts to God and our Country! One Country! One Language! One Flag!"

The last six words were shot out with a force that was explosive. The tone, the gesture, the gaze fixed reverently upon the flag, told their story of loyal fervor. And it was apparent that the salute was given as spontaneously and enthusiastically by the Japanese as by any of the other children. There were hundreds of them in the throng, and their voices rang out as clearly as any others, their hands were raised in unison. The coldest clod of a man who sees the children perform this act of reverence must feel a tightening at the throat, and it is even more affecting to see these young atoms from all the world actually being fused in the crucible from which they shall issue presently as good American citizens.

So much for the Japanese in the lower-grade schools. Everybody agrees that no children can be more polite and agreeable than they are. The principal burden of the complaint in San Francisco



In this Group may be found Representatives of at least Ten Nationalities

THE NUMEROUS JAPANESE CHILDREN IN THIS SCHOOL ATTEND IT FROM NINE O'CLOCK UNTIL TWO, AFTER HAVING BEEN IN THEIR NATIVE SCHOOL FROM SEVEN UNTIL NINE. AFTERWARD, FROM TWO O'CLOCK UNTIL FIVE OR SIX, THEY RETURN FOR INSTRUCTION IN THEIR OWN JAPANESE SCHOOL



"We give our heads and our hearts to God and our country! One country, one language, one flag!"

THIS SCENE SHOWS THE SALUTE TO THE AMERICAN FLAG WHICH FLIES IN THE GROUNDS OF THE KAIUALANI PUBLIC SCHOOL WHICH HAS MANY JAPANESE PUPILS. THE DRILL IS CONSTANTLY HELD AS A MEANS OF INCULCATING PATRIOTISM IN THE HEARTS OF THE CHILDREN

is that parents cannot endure to have their girls exposed to contamination by adult Asiatics, whose moral code is far different from our own. Whether or not there is reason for this complaint is not the question here. That there is such a feeling of apprehension among parents is readily found by any one who inquires, and it exists in Hawaii no less than in California. The Hawaiian school authorities long ago took steps to prevent the mingling of grown Japanese boys in classes with American girls.

In the Honolulu high school there are 143 pupils, including a few more boys than girls. Most of them are above fifteen years of age. There is now, as there has been for the last six years, only five per cent. of Asiatics among these pupils—three per cent. Japanese, and two per cent. Chinese. The boys are well behaved.

Professor M. M. Scott, the principal of the high school, was kind enough to call all the pupils, who were not taking examinations, out on the front steps of the building, where the visitor could inspect them in the sunshine. The change in the color scheme from that of the schools below was astounding. Below were all the hues of the human spectrum, with brown and yellow predominating; here the tone was clearly white.

What had made the change? Practically the Asiatics had been eliminated. But how? By building separate schools and brusquely ordering the Japanese to attend them in company with Chinese and Koreans, whom they despise? Not at all. The Hawaiian Commissioners of Public Instruction long ago made a regulation that no pupil may attend a school of the higher grade unless he has a thorough working knowledge of the English language.

"That rule," said Commissioner Wallace Farrington, "rids us of all individuals whose presence could possibly be objectionable. We have not now, and we never have had, any trouble over the presence of Japanese or any other Asiatics in our public schools. I do not think the question will ever cause us any annoyance."

"The rule under which the exclusion is accomplished is based on simple common sense, and no one can object to it. The speed of any fleet is the speed of the slowest ship in the fleet. It would be most unjust for us to delay the progress of our advanced pupils by putting in their classes foreigners who do not clearly understand English; for their presence would make it necessary to waste

time in long explanations. The fairness of that rule is so evident that we have never had any complaint from Japanese nor anybody else. It is—perhaps—a mere coincidence that the operation of the rule rids the classes of certain individuals whose presence may not be desired. We make no comparison with any other way of handling the problem; but we know that in Hawaii the Americans, the Japanese, and all the others, are satisfied with the plan on which we are working."

Mr. Miki Saito, His Imperial Japanese Majesty's Consul-General at Hawaii, has just returned from a three weeks' tour of inspection of the public schools throughout the islands, begun soon after the San Francisco incident was made public. He is, of course, devoted to the welfare of all the Mikado's subjects, and during his three weeks' tour he questioned children and parents everywhere.

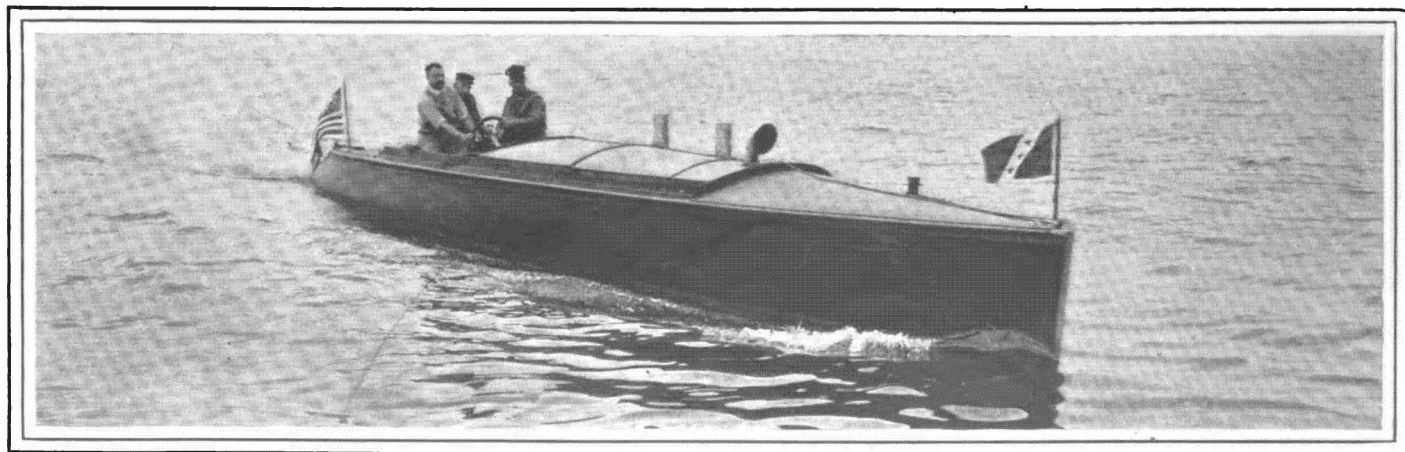
"You will be glad to know," said Mr. Miki to me, "that the Japanese people here are entirely satisfied with the treatment of their children in the public schools. I have not heard one word of complaint anywhere; but on the other hand I have heard our people express satisfaction at the kindness and cooperation of the Americans."

In the public schools our children have the same opportunities as the rest. On the plantations American employers have kindly put up buildings in which the Japanese teachers can hold school in our native tongue. I can find in the Hawaiian schools nothing to criticise and much to praise."

It is difficult for the unprejudiced observer to understand why the impetuous San-Franciscans did not adopt the Hawaiian plan of dealing with the Japanese in the schools. Surely they must have known of the easy success of the scheme, for in community of interests Honolulu is as near to San Francisco as Philadelphia is to New York.

The more one studies the subject, the harder it is to understand why the Californians took so much pains to affront the Japanese. The warlike spirit in a nation fresh from great victories may well be compared to a sleeping dog on the porch of a home he has just defended. The hasty Californians seem to have acted on the principle laid down by an American philosopher whose thoughts outstripped his words, so that he airily exclaimed, "Oh, let sleeping dogs bark!"

A MOTOR-BOAT WHICH HAS RUN A MILE IN 2:21 1-5



IN THE MOTOR-BOAT RACES AT PALM BEACH, FLORIDA. THE "DIXIE" RECENTLY MADE A NEW MILE RECORD AGAINST THE TIDE OF 2:21 1-5, WINNING BY THIS FEAT THE DEWAR TROPHY. RUNNING WITH THE TIDE HER TIME WAS ONE AND A FIFTH SECONDS LESS